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IN THE

Supreme Court of the United States

October Term — 1960

PETITION FOR CERTIORARI

No. 733

SOUTHERN CROSS STEAMSHIP CO., INC.
Petitioner,

v.

GEORGE FIRIPIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT O FAPPEALS FOR THE FOURTH CIRCUIT

HUGH S. MEREDITH
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Southern Cross Steamship Company, Inc., owner of the Honduran Steamship MARGARITIS prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above case on December 28, 1960.

CITATIONS OF OPINION BELOW

The memorandum opinions of the District Court printed in the Appendix are unreported at this printing. The opinion of the Circuit Court of Appeals, printed in the Appendix hereto, infra 23a, has at the time of the writing this Petition not been published in West Federal Reports advance sheets.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 28, 1960. The jurisdiction of this Court is invoked under the provisions of Title 28 U. S. C. §1254 (1).

STATUTES INVOLVED

The statutes involved are 46 U. S. C. A. 688 commonly known as the Jones Act and 46 U. S. C. A. 596 commonly known as the double wage or penalty statutes.

STATEMENT

The libellant, George Firipis, is a Greek citizen holding Greek seaman's papers. On March 13, 1958, at Bremen, Germany, libellant last signed Articles aboard the SS MARGARITIS (see Articles this Appendix). The SS MARGARITIS is a large merchant vessel owned by Southern Cross Steamship Company., a Liberian corporation. At the time libellant last signed Articles at Bremen, Germany, on March 13, 1958, the MARGARITIS flew the Honduran flag and the Articles executed by the libellant affirmatively provided that in case of injury the rights of the seaman and obligations of the ship owner were to be governed exclusively by the laws of the Republic of Honduras. (See paragraph 9 of Articles in Appendix). On April 1, 1958, while the MARGARITIS lay at Norfolk, Virginia, the libellant slipped on deck and injured his hand.

Thereupon libellant was removed from the MARGARITIS to the U. S. P. H. S. Hospital at Norfolk and was on the date last mentioned discharged from the MARGARITIS.

At the time of libellant's injury the stock of Southern Cross Steamship Company, Inc., was owned twenty percent (20%) by a United States citizen and eighty percent (80%) by Greek citizens. (See Appendix p. 15a).

At the time of his discharge from the MARGARITIS libellant was due $53.34 in wages accruing since he last signed Articles at Bremen, Germany, on March 13, 1958. These wages were paid libellant by the vessel's Norfolk agent on April 2, 1958, in return for which the agent obtained a receipt signed by libellant which stated libellant acknowledged payment of his wages in full. (See finding of District Court, Appendix p. 20a).

On April 14, 1958, libellant filed his libel in this case. On August 22, 1958, libellant gave his deposition and on this date and at this time respondent's proctor first learned that libellant was claiming $81.25 in wages allegedly unpaid him from a prior voyage.

On December 27, 1959, the case was heard by the District Court sitting in admiralty. Thereafter, the District Court rendered its memorandum opinion and supplemental memorandum opinion which it adopted as its fiindings of fact and conclusions of law. The District Court found the respondent liable for negligence under the Jones Act, 46 U. S. C. A. 688, and liable for double wages under 46 U. C. S. A. 596 from August 22, 1958,

the date libellant gave his deposition until said wages and penalties were paid.

The judgment of the District Court was affirmed by the Circuit Court of Appeals for the Fourth Circuit on December 28, 1960.

QUESTIONS PRESENTED

I. WHETHER 46 U. S. C. A. 688 COMMONLY KNOWN AS THE JONES ACT IS APPLICABLE WHERE A GREEK SEAMAN IS INJURED ON A HONDURAN VESSEL IN A UNITED STATES PORT WHEN THE VESSEL OWNER IS A LIBERIAN CORPORATION EIGHTY (80) PERCENT OF WHOSE STOCK IS OWNED BY GREEK CITIZENS AND ONLY TWENTY (20) PERCENT OF WHOSE STOCK IS OWNED BY A UNITED STATES CITIZEN AND WHERE THE HONDURAN CONSUL OFFERS TO SETTLE THE CLAIM UNDER THE PROVISIONS OF HONDURAN LAW, THE LIBELLANT HAVING STIPULATED IN SIGNING ARTICLES THAT HONDURAN LAW SHOULD APPLY IN SUCH CLAIMS.

II. WHETHER OR NOT THIS COURT'S INTERPRETATION OF 46 U. S. C. A. 596 AS SET FORTH IN McCREA v. UNITED STATES, 294, U. S. 23 IS STILL THE LAW OF THE LAND.

III. WHETHER DOUBLE WAGES UNDER 46 U. S. C. A. 596 CAN BE ASSESSED AGAINST A FOREIGN SHIPOWNER WHO FAILS TO PAY A FOREIGN SEAMAN WAGES DUE AT TERMINATION OF ARTICLES IN A FOREIGN PORT.

REASONS FOR GRANTING THE WRIT

I. The application of the Jones Act under the facts of the case at bar is in direct conflict with the

principles laid down by this Court in *Lauritzen v. Larsen,* 345 U. S. 571 and in *Romero v. International Term Co.,* 358 U. S. 354.

In the case at bar the vessel MARGARITIS flew the Honduran flag. The libellant was a Greek seaman who last signed Articles at Bremen, Germany. (See Articles in Appendix). These Articles specifically provided that the rights of the seaman and obligations of the shipowner should be determined by the laws of the Republic of Honduras (see paragraph 9 of Articles in Appendix). The Honduran consul at Norfolk offered to adjudicate the differences between the parties here involved and the Court below so found (Opinion Court of Appeals, page 4, Appendix). The vessel MARGARITIS was owned by a Liberian corporation. Eighty (80) percent of the stock of this Liberian corporation was owned by Greek citizens, while the remaining twenty (20) percent was owned by a United States citizen, at the time libellant was injured, (see Appendix, p. 15a). The libellant was injured in the course of his employment while the MARGARITIS was drydocked at Norfolk, Virginia.

The Circuit Court has sought to distinguish the case at bar from *Lauritzen, supra.,* on the grounds that it is an exception to that doctrine in that it falls within the purview of the following dicta expressed by Justice Jackson found in *Lauritzen, supra.,* at 345 U. S. 587, and quoted by the Circuit Court below:

> "But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping

laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have passed beyond the formalities of more or less nominal foreign registration *to enforce against American shipowners* the obligation which our law places upon them." (Italics added for emphasis).

In reaching this conclusion, Justice Jackson cited as authority in his footnotes the case of *Gerradin v. United Fruit Co.*, (2CCA) 60 F (2d) 927, certiorari denied, 287 U. S. 642. In *Gerradin,* the vessel flew the Honduran flag *but was actually owned by a New York corporation.* There was no question in *Gerradin,* but that the vessel was wholly owned by an American citizen corporation. In the case at bar, not only is the owning corporation an alien corporation, but of most importance *eighty (80) percent (the controlling interest) of that corporation's stock was owned by Greek citizens.* (See Appendix p. 15a). There is not a scintilla of evidence to support the Court of Appeals finding that any of the Greek stock owners were United States residents. This point was not once raised in the District Court nor was there ever such a finding by the District Court. Until this most startling decision was rendered, the application of the Jones Act to vessel, regardless of flag, which *were owned or ultimately controlled,* by American citizens made sense. However, *if actual control* is to be disregarded, there is no criteria or rule which can now be applied. Would the decision in *Lauritzen, supra.,* have been otherwise if twenty (20) percent of the stock of the corporate vessel owner had been held by an American citizen? We do not for a moment believe that it would. The basic prin-

ciple totally overlooked by the District Court and the Court below is that only where the vessel is owned by an American corporation, as in *Gerradin, supra.*, or where *all of the stock* of the corporation, as in *Bartholomew v. Universe Tanships, Inc.*, (2CCA), 263 F (2d) 437, cert. denied, 359 U. S. 1000, is owned by American citizens, should the courts apply the Jones Act when the application of the same is based on the allegiance of the owner.

The importance of this question of application of the Jones Act to foreign flag vessels where a minority interest is held by American investors, is self apparent and on this grounds alone a writ should be granted.

II. In awarding double wages to libellant under the facts of the case at bar, the Court below and the District Court's decisions were directly contra to this Court's decision in *McCrea v. United States*, 294 U. S. 23, re-argument denied 294 U. S. 382.

The libellant was discharged from the SS MARGARITIS on April 1, 1958, to the U. S. P. H. S. Hospital at Norfolk, Virginia. On April 2, 1958, the Master of the MARGARITIS, who had joined the MARGARITIS at Bremen seventeen days earlier, compiled what he believed to be an accurate wage account covering the wages due libellant. This wage account covered a period from the commencement of the last voyage on March 13, 1958 to libellant's discharge on April 1, 1958. (See Articles in Appendix). This account was turned over to the vessel's local agent, Messrs. Hasler & Company, who were instructed to pay the libellant forthwith. The vessel's agent thereupon sent someone

to the Marine Hospital to pay the libellant $53.34, the amount computed as due him, and obtained from the libellant a receipt acknowledging payment of all wages due up to and including April 1, 1958 (Appendix p. 20a). On August 21, 1958, libellant gave his deposition de bene ese, at which time respondent's attorneys first learned that libellant claimed he was due wages from a previous voyage and from the Master who left the MARGARITIS at Bremen in March of 1958. No allegation as to wages due from a prior voyage was ever made in libellant's libel. (See libel). The District Court, upon these facts, found that respondent's failure to pay the wages in question before August 21, 1958, was excusable, but that after August 21st respondent had put forward no valid excuse why the wages due for the voyage which ended at Bremen in March 1958 should not be paid. (Appendix p. 21a). Consequently, the District Court awarded libellant double wages from August 22, 1958, until such time as the wages and penalties are paid in full. (Appendix p. 21a).

46 U. S. C. A. 596, commonly known as "the penalty statute," sets forth the circumstances under which a seaman may become entitled to double wages. This statute reads as follows:

> "*The Master or owner of any vessel* making coasting voyages *shall pay to every seaman his wages* within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and *in case of vessels making foreign voyages. . . ., with twenty-four hours after the cargo has been discharged, or within four days*

after the seaman has been discharged, whichever first happens; . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned, without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; . . ." (Italics added for emphasis).

Liability for double wages accrues, if at all, from the end of the period within which payment should have been made. *Liability must be determined by the happening of an event within the period prescribed by the statute.* Consequently, if the failure to pay wages at the time of discharge was excusable, then the mere filing of suit or making demand at a later date cannot from that later date commence the running of any penalties.

A case which is on all fours with the case at bar is the *McCrea v. United States*, 294, U. S. 23. In the *McCrea case*, as in the case at bar, the lower courts found that the failure to pay certain earned wages at the time of the libellant's discharge was "excusable neglect". In *the McCrea case*, supra, the lower court ruled that the libellant was entitled to recover double pay for the number of days intervening after the libellant brought his suit. In the case at bar, the lower court ruled that the libellant was entitled to recover double pay for the number of days intervening after the libellant gave his testimony on August 21, 1958, or more than four (4) months after libellant was discharged from the MARGARITIS. Thus, the lower court in

the case at bar found that from April 1, 1958, the date of libellant's discharge from the MARGARITIS, to August 21, 1958, the date libellant gave his testimony, respondent's failure to pay the disputed wages was excusable.

The law is clear that under such circumstances the court cannot apply the double penalty statute. The remedy is by way of awarding wages plus accrued interest due on the same. As the Supreme Court of the United States said in *the McCrea, supra:*

> "... The liability is conditioned by the statute upon the refusal or neglect to pay wages 'in the manner hereinbefore mentioned without sufficient cause". The quated phrase refers to the specified periods within which the seaman's wages are directed to be paid, and the section thus imposes liability for neglect, without sufficient cause, to pay wages within the prescribed period. Petitioner seeks, by a more liberal interpretation of the words, to impose the liability for such delay in payment, without sufficient cause as may occur at any time after an excusable failure to pay within the prescribed period."

That is exactly what the lower court has sought to do in the case at bar. Finding the failure to pay excusable at the time of libellant's discharge, the court has found further, that some four months later that excusable failure was converted into a wilful failure to pay wages and from that later date imposed upon the respondent the penalty of double wages. However, as the Supreme Court stated continuing in its opinion in *the McCrea case,* supra:

> "This possibility is precluded by the further provision of the section that double wages shall

be paid for each day 'during which payment is delayed beyond the respective periods' within which the payment is to be made. Thus, liability for double wages accrues, if at all, from the end of the period within which payment should have been made. It must be determined by the hoppening of an event within the period, failure to pay wages without sufficient cause."

In the case at bar, the District Court found the failure to pay the disputed wages on April 1, 1958, the date libellant was discharged from respondent's vessel was excusable. This failure, the Court further found was excusable up to August 21, 1958. Accepting these basic findings of the District Court and applying them to the applicable statute relative to double wages, 46 U. S. C. A. 596, it is clear beyond a per adventure that this is not a case in which double wages can apply.

III. Awarding penalties or double wages to a Greek seaman for wages due him by a foreign vessel owner in a foreign port under expired Articles is not contemplated by 46 U. S. C. A. 596. In the case at bar, the libellant, a Greek seaman was allegedly due something in excess of £28 at the termination of Voyage No. 24, which ended at Bremen, Germany, on or about March 12, 1958. At Bremen, on March 13, 1958, a new Master joined the MARGARITIS and new Articles for a new voyage were signed. (See Articles in Appendix). Contrary to the finding of the Circuit Court that these Articles were signed on the high seas, the Articles themselves clearly state that they were signed at Bremen on March 13, 1958. This fact was also found by the District Court (see Supplemental Opinion of

District Court in Appendix, page 16a). Both the District Court and the Court below have attached some significance to the fact that the Articles in question were not validated until the vessel reached New York on April 1st. The obvious reason for this was that undoubtedly New York was the first port reached after the signing of Articles that had a Honduran consul.

Nevertheless, it is admitted, and the District Court so found, that the libellant was paid on April 2, 1958, one day following his discharge to the U. S. P. H. S. Hospital, at Norfolk, the sum of $53.54 (see District Court's original opinion, Appendix p. 9a). This amount the Court found was the wages due libellant from March 13, 1958, the date he last signed Articles in Bremen until April 1, 1958, the date of his discharge for hospitalization at Norfolk. The wages for this voyage were computed by the new Master who had joined the MARGARITIS at Bremen on March 13th and correctly covered the period of this libellant's service under those Articles.

Nevertheless, though libellant was admittedly fully paid at Norfolk on April 2, 1958, all wages due him under the Articles and for the voyage for which he was then signed, the District Court on finding wages due from a prior voyage which terminated at Bremen and under prior Articles, awarded penalties under 46 U. S. C. A. 596. This we respectfully submit the District Court, under the statute in question had no authority to do.

The first sentence of 46 U. S. C. A. 596 confines the wages to be considered to those arising under the

agreement under which the seaman was last shipped. (See 46 U. S. C. A. 596, Appendix p. 26a). The agreement under which this libellant last shipped was the Articles signed at Bremen on March 13, 1958. Admittedly, libellant was paid all wages due him under these Articles and for the voyage which was interrupted at Norfolk on April 1, 1958.

If libellant was due any wages they were due at Bremen, for a prior voyage and under other Articles. For as was stated in *Pacific Mail Steamship Co. v. Schmidt*, 241 U. S. 248 at page 250.

"The statute deals with voyages."

It is respectfully submitted that insofar as foreign shipowners are concerned 46 U. S. C. A. 596 is only applicable where the foreign seaman is discharged in a United States port and wages, due under the Articles that he was working at the time of his discharge in the United States port, are unpaid. This was not the situation in the case at bar.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,
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APPENDIX

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APPENDIX

ORIGINAL MEMORANDUM OF THE DISTRICT COURT

Libellant, an A/B seaman employed on the S.S. MARGARITIS, was injured on April 1, 1958, while the vessel was in drydock for minor repairs at Norfolk, Virginia. The accident occurred at approximately 3 P. M. while libellant was assisting in moving an oxygen tank from a pallet or crib which had brought the tank and other shipstore supplies from the dock to the deck of the vessel. The tank, weighing about 120 pounds, required the services of at least two men to remove

from the pallet, crib or bucket, and to place in its proper location on deck to await subsequent transfer to its final destination. One Apostolos Rousketos was inside the crib and proceeded to rest the tank on the edge of the crib. Libellant was outside of the crib or wire basket and on the inboard side of the starboard dock near the No. 3 hatch. Libellant, in assisting the removal of the tank, took hold of the forward or top of the tank end, after taking a step or two, slipped and fell. According to libellant, the crew had been oiling the winches located nearby and oil had flowed upon the deck in the immediate vicinity of the crib. Libellant contends that he slipped on oil, fell forward, and the tank dropped upon his right hand resulting in serious and permanent injuries to the fifth or little finger of his right hand. Testimony presented by respondents is in contradiction to that of libellant as to the presence of oil on the deck, but it is conceded that, for some unknown cause, libelland did slip and fall.

Only the third officer (Zolotos) and the seaman in the crib (Rousketos) were produced as witnesses by respondents, although admittedly there were at least three or four other members of the crew congregated in the area. The boatswain (Mathioudis), in charge of the unloading operation, was not called as a witness and his non-availability is not explained. One seaman (Mathioudis) was no longer a member of the crew when respondents' despositions were taken approximately nine months after the accident. The chief engineer was present at the scene but was not called upon to testify in the case. Other unidentified members of the deck department were also engaged in unloading ship-stores in the vicinity of the accident.

The unexplained failure to call material witnesses raises an inference that such witnesses, if permitted to testify, would not support the defense as advanced by respondents. With one exception, the witnesses presumably were in the employ of the respondent owner at the time respondents' depositions were taken. When we consider the fact that the libel was filed approximately two weeks following the accident, and the evidence further discloses that proctors for respondents interviewed certain crew members at Norfolk about three months after the accident, we believe it to be a fair assumption that some of the other witnesses were better situated to state facts which would assist the court in determining the case of libellant's fall. The postive testimony of libellant is to the effect that the crew had previously been engaged on the day in question in oiling the winches located from six to ten feet distant from the place where libellant fell. The oiling of winches would come within the supervision of the boatswain. Even more significant it should be noted that the third officer was situated on the outboard side of the starboard deck, and that the seaman in the crib, as well as the crib or basket itself, were between the third officer and the libellant. In explanation of his testimony that no oil was upon the deck in the area in question, the third officer stated that he had noted the condition of the deck about fifteen minutesa prior thereto and, after some persuasion by proctor for respondent, he further stated that the men were working in the area and he had wanted to see that the area was clean before bringing any provisions aboard. As to the seamen in the crib, basket, or bucket, the evidence as to the absence of oil on the deck is of a negative character and, additionally, his testimony is to the effect that he was in the crib,

the sides of which slanted away from the witness, placing this witness in a not too advantageous position to describe the condition of the deck. When all of these factors are considered, along with the proper inferences to be drawn from the attitude of respondent in refusing to pay maintenance at a time when libellant had obviously not reached his maximum cure, we think it plain that libellant has carried the burden of proof in establishing that the immediate cause of his fall was due to oil upon the deck in the area.

The libellant is a citizen of Greece. Approximately one year prior to his injury libellant signed an employment contract in Piraeus, Greece, and immediately flew to Alexandria, Egypt, where he originally signed aboard the S. S. MARGARITIS on or about April 6, 1957. The vessel is owned by the respondent, Southern Cross Steamship Company, Inc., a corporation organized and existing under the laws of the Republic of Liberia, having been so formulated on December 3, 1953. At the time of the injury the corporate stock was owned by Greek citizens, with the exception of 20% of said stock which was owned by an American citizen. In January, 1959, approximately eight months after the institution of this action, the American citizen sold his stock interest to the Greek citizens. Respondent's principal office is listed as Monrovia, Liberia. Southern Cross Steamship Company, Inc., maintained no office, and employed no persons, in the Republic of Honduras, although the MARGARITIS flew the flag of that country. Operating instructions for the vessel were issued in part by the Greek citizens, and in part by the American stockholder. No operating instructions emanated from the Republic of Honduras.

The vessel never visited Honduras on any voyage. She was purchased by, and delivered to, Southern Cross Steamship Company, Inc., on January 21, 1954, at LeHavre, France.

For a period of two years prior to the accident the vessel participated in thirteen voyages; nine of which involved visits to ports in the United States. At no time did the vessel visit Greece, Liberia or Honduras.

The libel, as amended, states a cause of action under the Jones Act, 46 U. S. C. A., §688, for negligence, and further asserts a claim for unseaworthiness under general maritime law. It is further contended that wages were not paid to libellant in a port of the United States pursuant to 46 U. S. C. A. §§596, 597. A claim for maintenance and wages to the end of the voyage is likewise asserted in a separate cause of action.

We turn to a consideration of the rights to maintain this action as alleged by libellant. Respondent insists that, as to the claim for damages, libellant must resort to the law of Honduras covering compensation for accidents arising from maritime work. If this law is applicable to the facts of this case, compensation equivalent to two-thirds of libellant's weekly wage would be payable for seven weeks covering the "loss" of the little finger. Under Article 53, the rights granted to the injured maritime worker against the master or vessel are exclusive. Libellant last signed Honduran articles on March 13, 1953, at the Port of New York. The articles do not describe the voyage or voyages to be undertaken, but do include a reference to any remedy for injury as being exclusively governed by the laws of the Republic of Honduras.

That the SS MARGARITIS is a "flag of convenience" cannot be doubted. A Liberian corporation, controlled by Greek and American interests as indicated, operated a vessel under the Honduran flag, which said vessel never visited Liberia, Greece, or Honduras. The contacts are essentially in the United States with a general agent in New York. Libellant's injuries occurred while the vessel was in drydock in the United States. Accepting the most recent pronouncements on the subject as stated in *Bartholomew v. Universe Tankships, Inc.*, 2 Cir., 263 F. (2d) 437, cert. denied, 359 U. S. 1000, 79 S. Ct. 1133, 3L. Ed. (2d) 1030, we believe that the total lack of contacts with Honduras, save and except the flying of the Honduras flag, precludes us from applying the law of the flag to this case. With no suggestion or evidence tending to show that the law of any other country should be applied, we lean to the view that substantial contracts exist between the seamen and the United States, in that the tortious conduct occurred therein, libellant last signed articles at New York, and orders for the operation of the vessel emanated in part from New York where a substantial stockholder maintained his residence and place of business. We are not unmindful of the teachings in *Lauritzen v. Larsen*, 345 U. S. 571, wherein the Jones Act was held inapplicable in a case involving a Danish seaman who, while temporarily in New York, signed aboard a ship of bona fide Danish flag and registry, and was injured in the course of his employment while in the harbor of Havana. We wholeheartedly agree with *Laauritzen*, but it should be noted from the opinion of Mr. Justice Jackson that cases involving nominal foreign registrations are not intended to be governed by the same rules.

Holding that the Jones Act applies to this case, we think it clear that negligence existed in directing libellant to perform a duty at a place not reasonably safe at the time, without at least directing libellant's attention to the presence of oil on the deck. There is credible evidence to support the view that defendant's officers or crew members should, by the exercise of ordinary care, have noted the presence of oil on the deck in sufficient time to have corrected the condition. Without a more definite pronouncement on the subject, it cannot be said that this transistory condition is tantamount to unseaworthiness. Cf. *Mitchell v. Trawler Racer, Inc.*, 1 Cir., 265 F. (2d) 426, cert. granted, 361 U. S. 808, argued January 21, 1960; 28 L. W. 3227.

The injuries were serious and painful. Initially, it appeared that libellant would have a "claw" hand, but subsequent plastic surgery treatment reduced the permanent disability to approximately five per cent of the total hand, or thirty per cent of the little finger. For his pain, suffering inconvenience, loss of wages, and permanent injury libellant is entitled to an award of $3300.00, which will be diminished by fifteen per cent for contributory negligence in failing to maintani a proper lookout for his own safety.

Libellant was confined to the United States Public Health Service Hospital at Norfolk from April 1, 1958, to May 15, 1958, and respondent paid maintenance at the rate of $6.50 per day until June 14, 1958, at which time payments were stopped. Undemiably, libellant did not reach the point of maximum cure until October 16, 1958. Eliminating the days that libellant was confined to the Norfolk General Hos-

pital for two plastic surgery operations, respondent is obligated to pay maintenance at the rate of $6.50 per day, plus interest on the delinquent payments at the rate of six per centum per annum computed on a weekly basis. It is well settled that where maintenance payments are due and unpaid without cause, interest is properly chargeable on such payments. *Medina v. Erickson*, 2 Cir., 226 F. (2d) 475. The total payments due, including interest computed in the date of final argument on January 12, 1960, aggregate $754.49, as per stipulation of counsel. Respondent has now paid all items for medical and hospital treatment.

The claim for wages and waiting time presents a rather unique situation from the state of the evidence. The uncontradicted testimony is to the effect that a new master took charge of the vessel in Germany immediately prior to the vessel's departure for Norfolk, and that the crew was not paid their wages in full while in Germany. This is supported not only by libellant's testimony, but also by a copy of a wage account submitted by the new master to libellant while "at sea" on March 13, 1958. The wage account covers the period from August 13, 1957, to March 13, 1958. It was partially prepared in typewritten form but manifestly other writings and figures were thereafter placed upon the account in pencil. As one item listed as an advance reveals £22-10-6 paid at Hamburg and Bremen, and another item shows a payment of £50 on March 8, 1958, for "Home to Greece," we must assume that these items, shown in pencil, were added to the account after the typewritten account was initially prepared.

Respondent, relying upon the language of the wage account, urges that it discloses on its face that

libellant was paid in full while "at sea" on March 13, 1958. The wage account reveals that, on that date, there was due to libellant the sum of £ 28 - 19 - 3. Libellant, at the time of his deposition on August 21, 1958, positively stated that he never received this money and that it was then due and owing. While the copy of the wage account indicates some writing in pencil at the bottom of the page, it cannot be said that this is the libellant's signature. Indeed, for some unknown reason, libellant was never even questioned as to whether he had received the money or signed his name indicating receipt of same. Presumably the original wage account is in the possession of respondent, but has never been produced. Such document, if produced, should readily reveal whether libellant's signature appears thereon. Respondent submitted no evidence as to libellant's claim for £ 28 - 19 - 3, due and unpaid on March 13, 1958, and payable on April 2, 1958, at Norfolk when the vessel departed, with libellant remaining in the hospital. As a demand for wages was made by libellant, he was entitled to this sum on April 2, 1958, and respondent advances no reason why the wages have never been paid.

Respondent's agent, Hasler and Company, paid libellant the sum of $53.54 at the U. S. Public Health Service Hospital on April 2, 1958. The receipt of this sum is admitted by libellant, and a receipt was apparently signed by libellant (by printing his name in English). The receipt, written in English, states: "Wages due up to and including April 1st, 1958, for Wage Account Attached." Respondent's agent did not produce the attached wage account and admittedly did not deliver a copy to libellant; the original having been

forwarded to the owner's agents in New York for the purpose of securing reimbursement for this expenditure. The local agent does not state that the receipt was either read or explained to libellant, and as libellant is a Greek, testifying through an interpreter, it is improbable that he knew the contents of the paper he signed. Libellant stated that he knew he had wages due him which had accrued since the wage account dated March 13, 1958, had been submitted to him, and respondent's agent testified that the sum of $53.54 covered approximately seventeen days' wages. The signing of the receipt dated April 2, 1958, affords no defense to respondent if, in fact, the wages due on March 13, 1958, remain unpaid.

Respondent's actions on the wage controversy are indeed strange. The production of a receipt for wages due on March 13, 1958, bearing libellant's signature, would put an end to this disputed issue of fact. If the wages were in fact paid "at sea" on that date, the original receipt must still be available. Even the testimony of the master, or other officer paying the wages to the crew, would have been of some assistance; but to rely merely upon a wage account bearing no identifiable signature or name affords no defense. The respondent owner has violated the statutes of the United States and is properly subjected to the waiting time provisions. Giving the shipowner the benefit of a doubt in erroneously assuming that the wages had been paid in full on April 2, 1958, there remains no excuse for this continued assumption after libellant testified on August 21, 1958. Until these wages are paid in full, respondent shall be liable under the waiting time statute for each day since August 22, 1958, plus the amount actually due.

Libellant's claim against Hasler and Company is dismissed. There is nothing that this local lumsbanding agent did, or failed to do, which supports any contention of legal liability. The decree will be against the vessel *in rem* and the respondent, Southern Cross Steamship Co., Inc., *in personam*. Adopting this memorandum as the Court's findings of fact and conclusions of law, pursuant to General Admiralty Rule 46-½, proctors for libellants will prepare and present, after inspection by proctors for respondents, an appropriate decree.

Norfolk, Virginia

* * * *

CORRECTED MEMORANDUM OF THE DISTRICT COURT

Libellant ,an A/B seaman employed on the S. S. Margaritis, was injured on April 1, 1958, while the vessel was in drydock for minor repairs at Norfolk, Virginia. The accident occurred at approximately 3 P.M. while libellant was assisting in moving an oxygen tank from a pallet or crib which had brought the tank and other shipstore supplies from the dock to the deck of the vessel. The tank, weighing about 120 pounds, required the services of at least two men to remove from the pallet, crib or bucket, and to place in its proper location on deck to await subsequent transfer to its final destination. One Apostolos Rousketos was inside the crib and proceeded to rest the tank on the edge of the crib. Libellant was outside of the crib or wire basket and on the inboard side of the starboard deck near the No. 3 hatch. Libellant, in assisting the removal of the tank took hold of the forward or top of the tank and, after taking a step or two, slipped and fell. According to libellant, the crew had been oiling the winches located nearby and oil had flowed upon the deck in the immediate vicinity of the crib. Libellant contends that he slipped on oil, fell forward, and the tank dropped upon his right hand resulting in serious and permanent injuries to the fifth or little finger of his right hand. Testimony presented by respondents is in contradiction to that of libellant as to the presence of oil on the deck, but it is conceded that, for some unknown cause, libellant did slip and fall.

Only the third officer (Zolotos) and the seaman in the crib (Rousketos) were produced as witnesses by respondents, although admittedly there were at

least three or four other members of the crew congregated in the area. The boatswain (Mathioudis), in charge of the unloading operation, was not called as a witness although the file reflects that libellant endeavored unsuccessfully to take the deposition of the boatswain and another witness on February 9, 1959, at New York; the notice to take depositions referring to these individuals as "former crew members." One seaman (Kostantinidas) was no longer a member of the crew when respondents' depositions were taken approximately nine months after the accident. The chief engineer was present at the scene but was not called upon to testify in the case. Other unidentified members of the deck department were also engaged in unloading shipstores in the vicinity of the accident.

The unexplained failure to call material witnesses raises a inference that such witnesses, if permitted to testify, would not support the defense as advanced by respondents. With the exceptions, as noted, the witnesses presumably were in the employ of the respondent owner at the time respondents' depositions were taken. When we consider the fact that the libel was filed approximately two weeks following the accident, and the evidence further discloses that proctors for respondents interviewed certain crew members at Norfolk about three months after the accident, we believe it to be a fair assumption that some of the other witnesses were better situated to state facts which would assist the Court in determining the cause of libellant's fall. The positive testimony of libellant is to the effect that the crew had previously been engaged on the day in question in oiling the winches located from six to ten feet distant from the place where libellant fell. The

oiling of winches would come within the supervision of the boatswain. Even more significant it should be noted that the third officer was situated on the outboard side of the starboard deck, and that the seaman in the crib, as well as the crib or basket itself, were between the third officer and the libellant. In explanation of his testimony that no oil was upon the deck in the area in question ,the third officer stated that he had noted the condition of the deck about fifteen minutes prior thereto and, after some persuasion by proctor for respondent, he further stated that men were working in the area and he had wanted to see that the area was clean before bringing any provisions aboard. As to the seaman in the crib, basket, or bucket, the evidence as to the absence of oil on the deck is of a negative character and, additionally, his testimony is to the effect that he was in the crib, the sides of which slanted away from the witness, placing this witness in a not too advantageous position to describe the condition of the deck. When all of these factors are considered, along with the proper inferences to be drawn from the attitude of respondent in refusing to pay maintenance at a time when libellant had obviously not reached his maximum cure, we think it plain that libellant has carried the burden of proof in establishing that the immediate cause of his fall was due to oil upon the deck in the area.

The libellant is a citizen of Greece. Approximately one year prior to his injury libellant signed an employment contract in Piraeus, Greece, and immediately flew to Alexandria, Egypt, where he originally signed aboard the S. S. Margaritis on or about April 6, 1957. The vessel is owned by the respondent, Southern Cross

Steamship Company, Inc. a corporation organized and existing under the laws of the Republic of Liberia, having been so formulated on December 3, 1953. At the time of the injury the corporate stock was owned by Greek citizens, with the exception of 20% of said stock which was owned by an American citizen. In January, 1959, approximately eight months after the institution of this action, the American citizen sold his stock interest to the Greek citizens. Respondent's principal office is listed as Monrovia, Liberia. Southern Cross Steamship Company, Inc., maintained no office, and employed no persons, in the Republic of Honduras, although the Margaritis flew the flag of that country. Operating instructions for the vessel were issued in part by the Greek citizens, and in part by the American stockholder. No operating instructions emanated from the Republic of Honduras. The vessel never visited Honduras on any voyage. She was purchased by, and delivered to, Southern Cross Steamship Company, Inc., on January 21, 1954, at LeHarve, France.

For a period of two years prior to the accident the vessel participated in thirteen voyages; nine of which involved visits to ports in the United States. At no time did the vessel visit Greece, Liberia or Honduras.

The libel, as amended, states a cause of action under the Jones Act, 46 U. S. C.A. § 688, for negligence, and further asserts a claim for unseaworthiness under general maritime law. It is further contended that wages were not paid to libellant in a port of the United States pursuant to 46 U.S.C.A. §§ 596, 597. A claim for maintenance nad wages to the end of the voyage is likewise asserted in a separate cause of action.

We turn to a consideration of the right to maintain this action as alleged by libellant. Respondent insists that, as to the claim for damages, libellant must resort to the law of Honduras covering compensation for accidents arising from maritime work. If this law is applicable to the facts of this case, compensation equivalent to two-thirds of libellant's weekly wage would be payable for seven weeks covering the "loss" of the little finger. Under Article 53, the rights granted to the injured maritime worker against the master or vessel are exclusive. Libellant last signed Honduran articles on March 13, 1958, apparently at Bremen, Germany, which said articles were not validated until the vessel reached New York. The articles do not describe the voyage or voyages to be undertaken, but do include a reference to any remedy for injury as being exclusively governed by the laws of the Republic of Honduras.

That the S. S. Margaritis is a "flag off convenience" cannot be doubted. A Liberian corporation, controlled by Greek and American interests as indicated, operated a vessel under the Honduran flag, which said vessel never visited Liberia, Greece, or Honduras. The contacts are essentially in the United States with a general agent in New York. Libellant's injuries occurred while the vessel was in drydock in the United States. Accepting the most recent pronouncements on the subject as stated in Bartholomew v. Universe Tankships, Inc., 2 Cir., 263 F.2d 437, certiorari denied 359 U.S. 1000, 79 S.Ct. 1138, 3 L.Ed.2d 1030, we believe that the total lack of contacts with Honduras, save and except the flying of the Honduran flag, precludes us from applying the law of the flag to this case. With no

suggestion or evidence tending to show that the law of any other country should be applied, we lean to the view that substantial contacts exist between the seaman and the United States, in that the tortious conduct occurred therein, the articles were validated at New York, and orders for the operation of the vessel emanated in part from New York where a substantial stockholder maintained his residence and place of business. We are not unmindful of the teachings in Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254, wherein the Jones Act was held inapplicable in a case involving a Danish seaman who, while temporarily in New York, signed aboard a ship of bona fide Danish flag and registry, and was injured in the course of his employment while in the harbor of Havana. We wholeheartedly agree with Lauritzen, but it should be noted from the opinion of Mr. Justice Jackson that cases involving nominal foreign-registration are not intended to be governed by the same rules.

Holding that the Jones Act applies to this case, we think it clear that negligence existed in directing libellant to perform a duty at a place not reasonably safe at the time, without at least directing libellant's attention to the presence of oil on the deck. There is credible evidence to support the view that defendant's officers or crew members should, by the exercise of ordinary care, have noted the presence of oil on the deck in sufficient time to have corrected the condition. Without a more definitive pronouncement on the subject, it canont be said that this transistory condition is tantamount to unseaworthiness. Cf. Mitchell v. Trawler Racer, Inc., 1 Cir., 265 F.2d 426, certiorari granted 361 U.S. 808, 80 S.Ct. 70, 4 L.Ed.2d 57, argued January 21, 1960, 80 S.Ct. —.

The injuries were serious and painful. Initially, it appeared that libellant would have a "claw" hand, but subsequent plastic surgery treatment reduced the permanent disability to approximately five per cent of the total hand, or thirty per cent of the little finger. For his pain, suffering, inconvenience, loss of wages, and permanent injury libellant is entitled to an award of $3,500, which will be diminished by fifteen per cent for contributory negligence in failing to maintain a proper lookout for his own safety.

Libellant was confined to the United States Public Health Service Hospital at Norfolk from April 1, 1958, to May 15, 1958, and respondent paid maintenance at the rate of $6.50 per day until June 14, 1958, at which time payments were stopped. Undeniably, libellant did not reach the point of maximum cure until October 16, 1958. Eliminating the days that libellant was confined to the Norfolk General Hospital for two plastic surgery operations, respondent is obligated to pay maintenance at the rate of $6.50 per day, plus interest on the delinquent payments at the rate of six per centum per annum computed on a weekly basis. It is well settled that where maintenance payments are due and unpaid without cause, interest is properly chargeable on such payments. Medina v. Erickson, 9 Cir., 226 F.2d 475. The total payments due, including interest computed to the date of final argument on January 12, 1960, aggregate $754.49, as per stipulation of counsel. Respondent has now paid all items for medical and hospital treatment.

The claim for wages and waiting time presents a rather unique situation from the state of the evidence. The uncontradicted testimony is to the effect that a new

master took charge of the vessel in Germany immediately prior to the vessel's departure for Norfolk, and that the crew was not paid their wages in full while in Germany. This is supported not only by libellant's testimony, but also by a copy of a wage account submitted by the new master to libellant while "at sea" on March 13, 1958. The wage account covers the period from August 13, 1957, to March 13, 1958. It was partially prepared in typewritten form but manifestly other writings and figures were thereafter placed upon the account in pencil. As one item listed as an advance reveals £22-10-6 paid at Hamburg and Bremen, and another item shows a payment of £50 on March 8, 1958, for "Home to Greece", we must assume that these items, shown in pencil, were added to the account after the typewritten account was initially prepared.

Respondent, relying upon the language of the wage account, urges that it discloses on its face that libellant was paid in full while "at sea" on March 13, 1958. The wage account reveals that, on that date, there was due to libellant the sum of £28-19-3. Libellant, at the time of his deposition on August 21, 1958, positively stated that he never received his money and that it was then due and owing. While the copy of the wage account indicates some writing in pencil at the bottom of the page, it cannot be said that this is the libellant's signature. Indeed, for some unknown reason, libellant was never even questioned as to whether he had received the money or signed his name indicating receipt of same. Presumably the original wage account is in the possession of respondent, but has never been produced. Such document, if produced, should readily reveal whether libellant's signature appears thereon. Respondent sub-

mitted no evidence as to libellant's claim for £28-19-3, due and unpaid on March 13, 1958, and payable on April 2, 1958, at Norfolk when the vessel departed, with libellant remaining in the hospital. As a demand for wages was made by libellant, he was entitled to this sum on April 2, 1958, and respondent advances no reason why the wages have never been paid.

Respondent's agent, Hasler and Company, paid libellant the sum of $53.54 at the U. S. Public Health Service Hospital on April 2, 1958. The receipt of this sum is admitted by libellant, and a receipt was apparently signed by libellant (by printing his name in English). The receipt, written in English, states: "Wages due up to and including April 1st, 1958, for Wage Account Attached". Respondent's agent did not produce the attached wage account and admittedly did not deliver a copy to libellant; the original having been forwarded to the owner's agents in New York for the purpose of securing reimbursement for this expenditure. The local agent does not state that the receipt was either read or explained to libellant, and as libellant is a Greek, testifying through an interpreter, it is improbable that he knew the contents of the paper he signed. Libellant stated that he knew he had wages due him which had accrued since the wage account dated March 13, 1958, had been submitted to him, and respondent's agent testified that the sum of $53.54 covered approximately seventeen days' wages. The signing of the receipt dated April 2, 1958, affords no defense to respondent if, in fact, the wages due on March 13, 1958, remain unpaid.

Respondent's actions on the wage controversy are indeed strange. The production of a receipt

for wages due on March 13, 1958 bearing libellant's signature, would put an end to this disputed issue of fact. If the wages were in fact paid "at sea" on that date, the original receipt must still be available. Even the testimony of the master, or other officer paying the wages to the crew, would have been of some assistance; but to rely merely upon a wage account bearing no identifiable signature or name affords no defense. The respondent owner has violated the statutes of the United States and is properly subjected to the waiting time provisons. Giving the shipowner the benefit of a doubt in erroneously assuming that the wages had been paid in full on April 2, 1958, there remains no excuse for this continued assumption after libellant testified on August 21, 1958. Until these wages are paid in full, respondent shall be liable under the waiting time statute for each day since August 22, 1958, plus the amount actually due.

Libellant's claim against Hasler and Company is dismissed. There is nothing that this local husbanding agent did, or failed to do, which supports any contention of legal liability. The decree will be against the vessel *in rem* and the respondent, Southern Cross Steamship Co., Inc., *in personam*. Adopting this memorandum as the Court's findings of fact and conclusions of law, pursuant to General Admiralty Rule 46½, 28 U.S.C.A., proctors for libellants will prepare and present, after inspection by proctors for respondents, an appropriate decree.

FINAL JUDGMENT ORDER

This cause having been heretofore heard by the Court on the depositions de bene esse of the parties and testimony taken in open Court and thereafter upon argument of counsel, and the Court having given careful consideration thereto filing its written Opinion on February 8, 1960, in accordance with said Opinion and further adopting said Memorandum and Opinion as the Court's findings of fact and conclusions of law pursuant to General Admiralty Rule 46½.

It is ADJUDGED, ORDERED and DECREED that the libellant, Georgios Firipis, do recover of the SS MARGARITIS, her boats, etc., in rem and Southern Cross Steamship Company, Inc., in personam the sum of Three Thousand, Five Hundred ($3,500.00) Dollars, for libellant's pain, suffering, inconvenience, loss of wages, and permanent injury, said sum however shall be diminished by fifteen per cent (15%) for contributory negligence of libellant leaving a recovery for the items mentioned in the net sum of Two Thousand, Nine Hundred, Seventy-five ($2,975.00) Dollars.

In addition to the above sum if is further ORDERED that libellant do recover of the respondents the sum of Seven Hundred, Fifty-four Dollars and Forty-nine Cents ($754.79) for unpaid maintenance.

In addition to the above two sums it is ORDERED that libellant do further recover of the respondents the dollar equivalent of his earned wages due at the time he separated from said vessel the same being Eighty-one Dollars and Twenty-five Cents ($81.25). And in addition to said earned wages it is further ORDERED that libellant do recover of the

respondents double his daily wage for violation of Title 46, U. S. C. A., Sections 596, 597, from August 22, 1958, through such time in the future as the same is unpaid, computing the said daily wage rate on the basis of the dollar equivalent of thirty two pounds monthly, libellant's monthly wage, and at the official present rate of exchange between pound and dollar the same being $2.80 for each pound, 14c for each shilling and one penny for each threepence.

Judgment is therefore entered in favor of libellant, Georgios Firipis, against the respondents SS MARGARITIS, her boats, etc., in rem and Southern Cross Steamship Company, Inc., in personam, in the sum of Three Thousand, Seven Hundred, Twenty-nine Dollars and Forty-nine Cents ($3,729.49) plus a sum which will equal double libellant's daily rate of pay from August 22, 1958, until paid, but if the said respondents pay the full amount of such penalties and interest to the Clerk of this Court, such penalties and interest shall thereupon stop.

To all of which action of the Court the respondents duly objected and expected to.

s/ Walter E. Hoffman
United States District Judge

Norfolk, Virginia
February 22, 1960

We Ask For This Order:
s/ Sidney H. Kelsey

Of Proctors for Libellant
Seen, Objected and Expected To:
s/ Walter B. Martin, Jr.

Vandeventer, Black & Meredith, Proctors
for Respondents

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 8099.

Southern Cross Steamship Co., Inc.,
Appellant,

versus

Georgios Firipis,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK.
WALTER E. HOFFMAN, DISTRICT JUDGE.

(Argued September 27, 1960. Decided December 28, 1960.)

Before SOBELOFF, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

Walter B. Martin, Jr., (Vandeventer, Black, Meredith & Martin on brief) for Appellant, and Sidney H. Kelsey for Appellee.

SOBELOFF, Chief Judge:

Important questions concerning the applicability of the Jones Act, 46 U.S.C.A. §688, and liability for double wages under 46 U.S.C.A. §596, are presented in this appeal by a shipowner from a decree in favor of a seaman for earned wages, double wages, maintenance, and damages for personal injuries resulting from negligence.

George Firipis, an able bodied seaman, was injured on April 1, 1958, while on board the Steamship MARGARITIS which was then in drydock in Norfolk, Virginia. In April, 1957, Firipis had signed an employment contract in Greece to serve upon the MARGARITIS for one year and joined the vessel in Alexandria, Egypt. On March 13, 1958, the ship left Bremen, Germany, bound for the United States and arrived in Norfolk on April 1, when it immediately went into drydock. Later that day, Firipis was assisting in moving an oxygen cylinder when he fell and injured his hand. He testified, and the District Court so found, that he slipped on oil on the deck. He was then discharged from the ship and taken immediately to the United States Public Health Service Hospital at Norfolk, where he remained until May 15, 1958. The day after his injury, on April 2, 1958, he was paid his wages for the period from March 13, 1958, to April 1, 1958, and signed a receipt for these.

On April 14, 1958, Firipis filed a libel against the ship and against her owner, Southern Cross Steamship Company, Inc., in the United States District Court for the Eastern District of Virginia, claiming damages for personal injuries under the Jones Act, maintenance, wages and double wages for waiting time.

On February 8, 1960, the District Court rendered judgment in favor of the libellant, Firipis, 181 F. Supp. 48. The court held that the Jones Act was applicable and that, under the circumstances of the case, the presence of oil constituted negligence, entitling the libellant to $3500 damages diminished by fifteen per cent for contributory negligence. The court also found that wages were not paid for a period of time prior to March 13, 1958, and awarded Firipis such wages plus the statutory double wages for non-payment without sufficient cause. Additionally, the court granted Firipis $754.79 for unpaid maintenance. On this appeal, the shipowner contests everything except the award for maintenance.

I. *Applicability of the Jones Act*

The MARGARITIS, an American built liberty ship, flew the flag of the Republic of Honduras and the articles executed by the libellant were Honduran, stating that in the case of accident, Honduran law should be applied. The shipowner insists that the law of the flag, which was proven below,[1] should control, and therefore the District Court committed error in holding the Jones Act applicable.

The leading case dealing with the applicability of the Jones Act where there are contacts with more than one nation is *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953). There, the Supreme Court discussed seven factors to be considered in determining the proper choice of law: (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance

[1] Under Honduran law, for the particular injury here, the libellant would receive compensation equivalent to two-thirds of his weekly wage for seven weeks.

or domicile of the injured seaman, (4) the allegiance of the shipowner, (5) the place of contract, (6) inaccessibility of a foreign forum, (7) the law of the forum. It is clear from the Court's opinion that very little weight is to be given the last three, and we will not discuss them further except to note that the articles covering the trip from Bremen to Norfolk were signed on the high seas and validated in New York, and that there is no problem about the accessibility of a foreign forum, as the libellant could have his claim adjudicated by the Hondurian Consul in Norfolk.

Among the various factors set forth in *Lauritzen*, the most important is the law of the flag. It was there said that "the weight given to the ensign overbears most other connecting events in determining applicable law." 345 U.S. at page 585. See also *Romero* v. *International Term. Co.*, 358 U.S. 354, 381 et. seq. (1959). However, if the law of the flag is to control, the flag must not be one of convenience merely but bona fide. Justice Jackson pointed out in *Lauritzen*, 345 U.S. at page 587:

> "But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them."

Many cases, both before and after *Lauritzen*, have refused to enforce such nominal foreign registration by disregarding flags of convenience. *Gerradin* v. *United Fruit Co.*, 60

F.2d 927 (2nd Cir., 1932); *Carroll* v. *United States*, 133 F.2d 690 (2nd Cir., 1943); *Bartholomeze* v. *Universe Tankships, Inc.*, 263 F.2d 437 (2nd Cir., 1959); *Zielinski* v. *Empresa Hondurena De Vapores*, 113 F. Supp. 93 (S.D. N.Y., 1953).[2] Turning to the present case, the only contacts the MARGARITIS had with Honduras were the flag and articles. The ship was owned by a Liberian corporation, all of whose stock was owned by Greek and American citizens. The orders directing the movements of the vessel came partly from the American and partly from the Greek owners. The members of the crew were residents of Greece, except for two residents of the United States. The injury occurred in an American port. In fact, the vessel had never, in any of its voyages, visited a Honduran port. We cannot, confronted with such an absence of any significant contacts with Honduras, uphold the shipowner's contention

[2] Moreover, even in situations where the flag was not shown to be merely one of convenience, other considerations have been held to justify the application of the Jones Act to ships of foreign registry. The Supreme Court in the *Lauritzen* case held that the law of the flag was the most important element, not that it was always the controlling element, and the Court recognized that heavy countervailing considerations might override it. In *Uravic* v. *Jarka Co.*, 282 U.S. 234 (1931), the Court, in an opinion by Mr. Justice Holmes, held that where the seaman was an American and the injury occurred in an American port, the seaman could sue under the Jones Act even though the ship was German. On the other hand, *Romero* v. *International Term. Co.*, 358 U.S. 354 (1959), held that the mere fact that the injury happened while the ship was in American waters was not standing alone, sufficient for the application of American law. For other cases holding the Jones Act applicable where the injuries occurred on foreign ships, see: *Gambera* v. *Bergoty*, 132 F.2d 414 (2nd Cir., 1942); *Kyriakos* v. *Goulandris*, 151 F.2d 132 (2nd Cir., 1945); *cf.*, *The Paula*, 91 F.2d 1001 (2nd Cir., 1937); *O'Neill* v. *Cunard White Star*, 160 F.2d 446 (2nd Cir., 1947). In discussing these Second Circuit cases and others, the Supreme Court in *Lauritzen* observed: "No two of these cases present exactly the same basis for application of American law and their contrary results do not necessarily mean inconsistency. But they illustrate different considerations which influence choice of law in maritime tort cases." 345 U.S. at page 574, note 3.

that Honduran law should have been applied. The flag was nothing more than illusory.

One further facet of this problem merits discussion. The record in this case reveals that the significant contacts were with two countries, the United States and Greece. However, neither side, either in the District Court or in this court, suggested that Greek law should have been applied, nor introduced below any evidence of what the Greek law was. Under such circumstances, the question arises whether this court should on its own initiative examine the record to determine if sufficient contacts with the United States existed to permit a Jones Act suit, or whether, in the alternative, the case should be remanded for proof and application of Greek law.[3] However, we do not have to decide whether it would be appropriate for this court to remand for the application of a country's law neither contended for nor proven, for we conclude that the District Court was not clearly in error in holding that the contacts with the United States were substantial enough to warrant applying the Jones Act.

The only evidence offered by the shipowner relevant to the applicability of the Jones Act consisted of answers to certain interrogatories propounded by the libellant, and the testimony of Riley M. Gregory, a partner in Hasler & Company, the shipowner's Norfolk agent. In the interrogatories, the shipowner, Southern Cross Steamship Company, was asked to state the names, addresses and citizen-

[3] In *Lauritzen v. Larsen*, *supra*, although the injury happened in Cuban waters, the two parties argued for the application of American and Danish law, respectively. The Court, in discussing the weight to be given to the place of the injury, observed that they need not decide the point, as neither party urged that Cuban law was controlling.

ship of all stockholders or persons holding an interest in the company. The shipowner answered that at the time of the injury, 20% of the corporate stock was owned by an American, Mr. Stephen Perry, residing in New York, and 80% of the stock was owned by Greek citizens. Although the answers gave the name and address of the American owner, the names and addresses of the Greek owners were not given even though expressly asked for. In response to a question about who gave the operating instructions for the MARGARITIS, the shipowner stated that such orders were given by both the Greek owners and the American owner. The shipowner was also asked to list the voyages of the MARGARITIS for a period of two years prior to the injury. The answer listed thirteen voyages of which nine were either to or from United States ports. None of the voyages listed were to or from Greek, Liberian, or Honduran ports. The answers to the interrogatories were signed in New York by the President of Southern Cross Steamship Company, Stamatios Perivolaris, presumably one of the Greek owners. This fact, plus the refusal to give the names and addresses of the Greek owners, lends some support to the libellant's contention that some, at least, of the Greek owners were actually residents of the United States and that the ship was really controlled from New York.

The evidence given by Mr. Gregory, a partner in the firm acting as the shipowner's Norfolk agent, was the only other evidence offered by the shipowner on this question. Mr. Gregory's testimony supports the view that the vessel was controlled from New York. He testified that, as far as he knew, the Southern Cross Steamship Company was a New York corporation located at No. 1 Broadway in New York City. He was asked what was the connection between Southern Cross and the Eastern Steamship

Agency, Inc., located at the same address, and he replied that he did not know. It is asserted by the shipowner that Eastern Steamship was just the general agent of Southern Cross. However, Gregory testified further that as far as Hasler & Company was concerned, Eastern Steamship Agency controlled the vessel and directed its operations. Eastern Steamship Agency had reimbursed the Norfolk agent for all of the bills in connection with the ship and with the libellant's injury in Norfolk. It is also noteworthy that the cable address of Eastern Steamship is "Perivolari, New York," which is essentially the same as the name of the President of Southern Cross, the owner of the ship.

The above facts, although meagre, are not disputed. They do indicate that the effective control of the vessel was by American interests. This, coupled with the fact that the injury occurred while the ship was in drydock in an American port and with the ship's Honduran registration being illusory, is sufficient under the doctrine of *Lauritzen* v. *Larsen*, *supra*, for the application of the Jones Act. In *Bartholomew* v. *Universe Tankships, Inc.*, 263 F.2d 437, 440 (2nd Cir., 1959), the court, after reviewing the many cases in this area, said:

> "It is apparent then that the contacts considered most vital in one case are not necessarily of controlling importance in another.
>
> "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. Thus we conclude that the test is that 'substantial' contacts are necessary."

In the instant case, the District Court was not in error in finding that substantial contacts existed with the United States, warranting the invocation of American law.

II. *Liability For Double Wages*

With regard to the libellant's claim for double wages under 46 U.S.C.A. §596,[4] the District Court found, upon uncontradicted testimony, that when the new master took charge in Germany prior to the vessel's departure for Norfolk, the crew had not been paid their full wages due at that time. The ship left Germany on March 13, 1958, and later that day, evidently while at sea, a copy of a wage account was given to Firipis by the new master. That account reveals that there was then due him over 28 pounds in wages. Firipis testified that he had never received this money, and there is nothing on the copy of the wage account indicating that he did receive it. As the District Judge observed, the original wage account presumably was in the possession of the respondent, but it has never

[4] The statute provides:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

been produced, nor has any receipt ever been produced for the wages due on March 13, 1958. Moreover, no testimony or other evidence was presented by the shipowner indicating that these wages were ever paid.

After his injury, the libellant made a demand for wages and was paid $53.54 on April 2, 1958, at the United States Public Health Service Hospital by Hasler & Company, the respondent's Norfolk agent. This sum covered his wages from March 13, 1958, to April 1, 1958. Unpaid wages were claimed by Firipis when his libel was filed on April 14, and the claim for wages up to March 13, was repeated in his deposition on August 21, 1958. The District Judge stated:

> "Respondents actions on the wage controversy are indeed strange. The production of a receipt for wages due on March 13, 1958 bearing libellant's signature, would put an end to this disputed issue of fact. If the wages were in fact paid 'at sea' on that date, the original receipt must still be available. Even the testimony of the master, or other officer paying the wages to the crew, would have been of some assistance, but to rely merely on a wage account bearing no identifiable signature or name affords no defense. The respondent owner has violated the statutes of the United States and is properly subjected to the waiting time provisions. Giving the shipowner the benefit of a doubt in erroneously assuming that the wages had been paid in full on April 2, 1958, there remains no excuse for this continued assumption after the libellant testified on August 21, 1958. Until these wages are paid in full, respondent shall be liable under the waiting time statute for each day since August 22, 1958 plus the amount actually due."

Although the District Court seemed to have found that the failure to pay wages on April 2 was not justified, it did not assess double wages until after August 21. What prompted giving the shipowner this amelioration is not entirely clear.

The shipowner argues that either the District Judge must award penalties for non-payment of wages from the end of the 24-hour period after the cargo has been discharged, or within four days after the seaman has been discharged, or no penalties at all may be awarded. It is asserted that by not imposing penalties from April 2, 1958, but having them run rather from August 22, the District Court found that the failure to pay wages when due was with sufficient cause and that under the statute such failure cannot at some later date become inexcusable. It should be noted at the outset that the shipowner's argument is based upon a false premise. The District Court did not find that the failure to pay wages in April, 1958, was justified. In fact, the District Judge's opinion plainly enough indicates that the retention was without sufficient cause. What the District Judge did was, in the exercise of his discretion, to give the shipowner the benefit of any doubt and relieve him of the double wage obligation for a portion of the period. It would seem that the shipowner has no cause to complain of this, and the seaman does not appeal from such action.

The shipowner's reliance is upon *McCrea* v. *United States*, 294 U.S. 23 (1935), reargument denied 294 U.S. 382 (1935). There, the libellant, a seaman on the S.S. AMERICAN SHIPPER, demanded, when the ship was in a foreign port, that he be given his discharge and the wages due him. He cited to the master certain statutes

dealing with the failures to make proper division of the crew into watches and with the duty of American Consuls in foreign ports to inquire into claims by seamen that they are entitled to their discharge because of the unseaworthiness of the vessel etc. The master asked the seaman to meet him at the American Consul's office the next day. When the seaman arrived at the Consulate, he was informed that he was not entitled to discharge, and left before the master arrived. The master did not see the libellant afterwards, and the following day the libellant left the ship without ever again returning. Suit was later filed for wages due and double wages for waiting time. The District Court held that the seaman had been entitled to his discharge and wages, that the master however had sufficient cause to withhold them when the demand was made, but that the seaman later became entitled to double wages for the number of days of retention after suit was brought.

The Supreme Court assumed for argument's sake only that the seaman had been entitled to his wages and that the master's only valid excuse for non-payment was that the seaman did not contact him after the initial demand. The Court held that under such circumstances, the seaman was not entitled to double wages for the period following initiation of the suit. The Court stated with respect to the statute, 294 U.S. at pages 31-32:

> "Petitioner seeks, by a more liberal interpretation of the words, to impose the liability for such delay in payment, without sufficient cause, as may occur at any time *after an excusable failure to pay within the prescribed period*. This possibility is precluded by the further provision of the section that double wages shall be paid for each day during which payment is

delayed beyond the respective periods within which the payment is to be made. Thus, liability for double wages accrues, if at all, from the end of the period within which payment should have been made. It must be determined by the happening of an event within the period, failure to pay wages without sufficient cause. The statute affords a definite and reasonable procedure by which the seaman may establish his right to recover double pay where his wages are unreasonably withheld. *But it affords no basis for recovery if, by his own conduct, he precludes compliance with it by the master or owner. He cannot afterward impose the liability by the mere expedient of bringing suit upon it.*" (Emphasis supplied).

See also *The A. J. Baker*, 76 F.2d 871, (6th Cir., 1935) as previously mentioned, in the present case, contrary to *McCrea*, there was no finding of excuse or justification within the period during which wages should have been paid. Moreover, even if there had been facts indicating some justification for withholding wages for a time, there is no suggestion that any conduct of the seaman contributed to the delay.

With regard to liability for double pay, a doctrine had developed before the *McCrea* case, and has continued to the present time, that the District Court has a measure of discretion through the application of equitable principles in determining the number of days for which double wages should be assessed. *McCrea* did not purport to overrule this line of cases. In spite of the statutory language appearing to require the assessment for every day that payment is wrongfully withheld until actual payment, the Supreme Court in *Pacific Mail S.S. Co.* v. *Schmidt*, 241 U.S. 245 (1916),

held that, because of the particular circumstances of that case, penalties should stop at the time of the District Court's decree and not run during the pendency of the appeal. Other cases have likewise held that where payment is withheld without cause, double wages need not always be allowed for every day until actual payment, but in appropriate circumstances be limited to a shorter period because of particular equities. *Mystic S.S. Co.* v. *Stromland*, 20 F.2d 342 (4th Cir., 1927); *Mavromatis* v. *United Greek Shipowners Corporation*, 179 F.2d 310 (1st Cir., 1949); *Foster* v. *Oro Navigation Company*, 128 F. Supp. 113 (S.D. N.Y., 1954), aff'd. 228 F.2d 319 (2nd Cir., 1955); *The Chester*, 25 F. 2d 908 (D. Md., 1928).

While in the above cases assessments for waiting were made from the beginning of the prescribed statutory period and discretion was exercised to shorten the period to some specified date before actual payment, there have also been cases where the limitation has been placed at the opposite end of the period of retention. In other words, in these cases the courts did not begin the double wage allowance until sometime beyond the date when payment of wages should have been made. *Swanson* v. *Torry*, 25 F.2d 835 (4th Cir., 1928); *Samad* v. *The Etivebank*, 134 F. Supp. 530 (E.D. Va., 1955); *Spero* v. *Steamship The Argodon*, 150 F. Supp. 1 (E.D. Va., 1957).

Certainly, *McCrea* v. *United States*, *supra*, holds that where some fault of the seaman furnishes justification for the initial failure to pay wages at the prescribed time, the shipowner is not to be held to the double wage liability even if the excuse for non-payment later becomes inapplicable. Moreover, the Supreme Court's opinion in *McCrea* indicates that even if facts other than the seaman's conduct

constitute a legally sufficient excuse for non-payment of wages at the time prescribed in the statute, normally no double wages will be imposed for a later period after the excuse ceases to exist. However, we do not think that the rule laid down in *McCrea* is as far-reaching as the shipowner's contention in the instant case. Fact situations may arise where the District Court finds the shipowner's conduct sufficiently inexcusable to render him liable for double wage penalties. However, equities not amounting to justification may be found to have existed when the wages fell due and which later became inapplicable. The District Court may in such circumstances properly postpone the running of double wages, confining them to the period after any equity supporting the shipowner's action has disappeared.

III. *Other Points Raised by the Shipowner*

The appellant's remaining claims of error require less extensive treatment. The shipowner also contests the awards for wages and waiting time on the ground that Firipis was paid in full for the voyage ending in a United States port in April, 1958, and that his claim for wages relates to a previous voyage ending at Bremen, Germany, in March, 1958. To support its position that a separate voyage began from Bremen on March 13, 1958, the shipowner points to the new articles signed after the ship left Bremen. It is asserted that any failure to pay wages occurred on March 13 in a foreign port, and because of this, no suit will lie in under the American law for such wages.

It is not clear whether the voyage from Bremen to Norfolk was considered a separate voyage or not. Where the ship had been immediately prior to its arrival in Bremen,

or what the previous articles contemplated is not revealed by the record. It is clear, however, that Firipis signed a one year employment contract in April, 1957, and that under it wages were due. Whether the period for which they were due was a separate voyage, thereby having rendered the shipowner liable in Bremen on March 13, need not be decided. Under circumstances such as these, it has been expressly held that such past wages from a previous voyage, plus double wages, may be the subject of suit in this country after the ship reaches an American port. *Mavromatis* v. *United Greek Shipowners Corporation*, 179 F.2d 310, 317, 319 (1st Cir., 1949). See also *Korthinos* v. *Niarchos*, 175 F.2d 730 (4th Cir. 1949).

The shipowner attacks the District Court's finding of fact that oil on the deck caused the libellant's fall, asserting that in arriving at this finding, the District Court made improper inferences. In its opinion, the District Court pointed out that only one officer and one seaman were called as witnesses by the shipowner, although there were several other members of the crew in the area at the time of the injury. The court, after discussing this aspect in detail, said: "The unexplained failure to call material witnesses raises an inference that such witnesses, if permitted to testify, would not support the defense as advanced by respondents." We think that such an inference, in the circumstances of this case, was not unjustified. See *The New York*, 175 U.S. 187, 204 (1899).[3] It is also argued that the District Court drew an inference from the shipowner's

[3] The shipowner relies upon *Pacific-Atlantic S.S. Co.* v. *United States*, 175 F.2d 632 (4th Cir., 1949), but that case is not in point, as there, only two out of dozens of witnesses were not called. This court recognized that in those circumstances, the general rule permitting an inference from the failure to call witnesses was not applicable.

refusal to pay maintenance that oil on the deck caused the libellant to fall. Of course, such a bald inference would be illogical, but we do not think that the court intended any such thing. After reviewing the relevant evidence, the court did refer to the shipowner's failure to pay maintenance. This was, perhaps, a factor the court took into consideration as bearing upon the credibility of the shipowner's theory. However, the finding of fact that oil upon the deck caused the fall was supported by direct testimony and is not clearly erroneous. The mere recital in the District Court's opinion that the shipowner failed to pay maintenance at a time when the libellant was not yet cured is not sufficient to upset the court's finding of fact as to the cause of the injury.

The appellant complains of the District Court's final decree requiring deposit of earned wages and double wages in the registry of the court in order to stop the running of double pay pending appeal. It is argued that under *Pacific Mail S.S. Co.* v. *Schmidt*, 241 U.S. 245 (1916), penalties can *never* run beyond the date of the District Court's decree. Of course, the language of the statute indicates that penalties run until actual payment, whenever it might be. However, as we pointed out previously, the *Pacific Mail* case held that particular circumstances might make it appropriate to shorten the period. That case did not hold that liability for waiting time always stops with the trial court's decree.[6] We need not decide here whether double wages could have been imposed pending appeal, as the order of the District Court limited the shipowner's liability to the date of the decree and furnishes it no proper ground

[6] In fact, the Court in *Pacific Mail* expressly refrained from ruling upon this question, 241 U.S. at page 251.

for complaint. It would seem to be no abuse of discretion to require such payment into court, thereby protecting the shipowner against increased liability and insuring payment to the seaman.

Finally, it is asserted that the court erroneously refused to consider a letter that Hasler & Company, the shipowner's Norfolk agent, sent to the shipowner in New York, after paying the libellant his wages for the period from March 13, 1958, to April 1, 1958, stating that the libellant had been paid in full. In the first place, there is no evidence that the court refused to consider this letter. In fact, it might have been because of such letter that the District Court postponed the running of double wages. Moreover, this letter of the Norfolk agent constitutes no justification for failing to pay the wages due for a period prior to the ship's departure from Bremen on March 13, 1958. The appellant advances no reasons why the mere assertion by a ship's local port agent, who enters the case later, excuses an otherwise unjustified failure to pay a seaman's wages. Something more would have to be shown.

For the above reasons, the decree of the District Court is

Affirmed.

Respondent's Exhibit No. 4

April 15, 1958

Messrs. Vandeventer, Black & Meredith, Attorneys at Law
Citizens Bank Building
Norfolk, Virginia

Attn: Mr. Walter Martin

Gentlemen:

S. S. "MARGARITIS"

We confirm telephone conversation of even date, and, as per your request, attach hereto Citation In Admiralty No. 7946, filed in the United States District Court for the Eastern District of Virginia, which is served on us by Mr. Kelsey and Mr. Babalas on behalf of Mr. GEORGIOS FIRIPIS, who was placed in the hospital with an injured hand on April 2, 1958.

For your guidance, this seaman was paid his full wages on April 2, 1958.

As this vessel, according to the Owners, is represented in the U. K. Club, we trust that this Citation will have your close attention, and ask that as soon as you have the attached photostated you will return same to us for our file.

Very truly yours,
R. T. Hasler, Jr.

RTHJr/ef

cc: Eastern Steamship Agency, Inc.
New York, New York

LIBELLANTS PROCTOR INTRODUCES LIBELLANTS INTERROGATORIES AND RESPONDENTS ANSWERS THERETO:

Mr. Kelsey:

We introduce all of the libellant's interrogatories and all of the answers to libellant's interrogatories, every one of them. Every one of them are pertinent.

* * * *

CERTAIN OF LIBELLANTS INTERROGATORIES AND RESPONDENTS ANSWERS THERETO:

1. Q. "State the date of incorporation and under what state of the United States said respondent Southern Cross Steamship Company, Inc., is incorporated?

A. "The Southern Cross Steamship Company, Inc., is a Liberian Corporation, incorporated on December 3, 1953."

2. Q. State the address of the principal office of said Southern Cross Steamship Company, Incorporated together with the address of any other such offices of said respondent."

A. "80 Borad Street, Monrovia, Liberia."

6. Q. "State whether or not respondent Southern Cross Steamship Company, Incorporated, directly issued orders or instructions with reference to the management, operation, control and sailing destinations of the SS MARGARITIS."

A. "Southern Cross Steamship Co., Inc., issues orders directly for the operatoin, etc., of the SS MARGARITIS."

Title 46 USCA 596:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shlal be recoverable as wages in any claim before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts . . ."

"ROL DE LA TRIPULACION" Y CONTRATA DE ENGANCHE

"CREW LIST" AND ARTICLES OF AGREEMENT

La Ley Organica de la Marina Mercante Nacional de la República de Honduras dice:

Título VIII.—Artículo 29: El Capitán y demás oficiales de los navíos mercantes nacionales que desempeñen cargo técnico o profesional, deberán portar un CERTIFICADO DE IDONEIDAD que los habilite para desempeñar tal cargo . . . . .

Título IX.—Artículo 24: . . . . . EL "ROL DE LA TRIPULACION" expresará los términos y condiciones del enganche . . . . .

Artículo 25: EL "ROL DE LA TRIPULACION" deberá ser firmado por el Capitán y todos los miembros de la Tripulación antes de hacerse la nave la mar . . . . .

Artículo 26: EL "ROL DE LA TRIPULACION" y las adiciones hechas al mismo deberán ser vistos por el Comandante del Puerto Hondureño de enganche o por los Cónsules de la República en el enganche se haga en puerto extranjero . . . . .

Artículo 29: Los términos de enganche, condiciones de trabajo, y los derechos y obligaciones que ambas partes contratantes libremente convengan y que consten expresamente en el Rol de la Tripulación serán de forzoso cumplimiento . . . . .

Título XII.—Artículo 57: Todo tripulante de nave mercante nacional mayor de cien toneladas, tendrá la obligación de obtener y portar consigo un LIBRETA DE IDENTIFICACION que lo habilitará para trabajar en las referidas naves mercantes . . . . .

Título XIII.—Artículo 65: Las naves mercantes nacionales de tráfico internacional tendrán la obligación de traer abordo los siguientes documentos oficiales: 1 . . . . . 2 . . . . . 3—"ROL DE LA TRIPULACION" . . . . .

The Original Law of the National Merchant Marine of the Republic of Honduras says:

Title VIII.— Article 29: The Captain and other officers of National Merchant vessels who occupy a technical or professional post on board must have a CERTIFICATE OF CAPACITY which entitles them to occupy such a post.

Title IX.— Article 24: . . . . . The Articles of Agreement will express the terms and conditions of the enrollment . . . . .

Article 25: The Articles of Agreement must be signed by the Captain and all the crew before the vessel goes to sea . . . . .

Article 26: The Articles of Agreement and the additions made thereto must be visaed by the Commandant of the Honduran Port of Enrollment or by the Consuls of the Republic if the enrollment is made in a foreign port . . . . .

Article 29: The terms of the enrollment, work conditions and the rights and obligations which both contracting parties freely agree to, and which appear in the Articles of Agreement will be absolutely obligatory . . . . .

Title XII.— Article 57: Every member of the crew of a national merchant vessel of over 100 tons will have the obligation of obtaining and carrying with him his IDENTIFICATION BOOK which will habilitate him to work on the aforesaid national vessels.

Title XIII.— Article 65: National merchant vessels engaged in foreign traffic will be required to have on board the following documents: 1 . . . . . 2 . . . . . 3 Articles of Agreement . . . .

CONTRATA DE ENGANCHE

(Articles of Agreement)

ENTRE EL CAPITAN Y TRIPULACION AL SERVICIO DE LA MARINA MERCANTE DE LA REPUBLICA DE HONDURAS

(Between Master and Seamen in the service of the Merchant Marine of the Republic of Honduras)

Oficina del CONSULADO de la Republica de Honduras en el Puerto de NEW YORK

Office of the of the Republic of Honduras at the Port of

a los días del mes de , 19

this days of the month of , 19

QUEDA CONVENIDO ENTRE EL CAPITAN Y LA TRIPULACION DEL

It is agreed between the Master and the Seamen of the

DEL CUAL ES CAPITAN Y QUE SALE RUMBO HACIA

of which is Master now bound for

O CUALQUIER OTRO PUERTO O LUGAR DEL MUNDO QUE EL CAPITAN ORDENARE, Y DE REGRESO A

or any part of the world as the master may direct, and back to

PUERTO FINAL DE DESCARGA Y POR UN TERMINO QUE NO EXCEDA DE MESES, QUE:

final Port of discharge, for a term not exceeding months, that:

1. Adjudicaciones serán hechas solamente a favor de las siguientes personas: esposa, hijos, padres, hermanos, hermanas, abuelos, nietos, sobrinos, o sobrinas, cuando sean debidamente aprobadas por la Autoridad respectiva, y deberán ser insertadas en el Libro de Adjudicaciones antes de comenzar el viaje.

2. No se hará avalanzas a la Tripulación antes del tiempo en que hayan actualmente sido devengados.

3. No se permitirán armas peligrosas ni bebidas alcohólicas en poder de la Tripulación.

4. La Tripulación podrá ser transferida a cualquiera otra embarcación operada por la misma compañía bajo las mismas condiciones de este contrato.

5. La Tripulación trabajará el día de la llegada a puerto hasta las cinco de la tarde.

6. La Tripulación trabajará en la carga y el lastre si así lo requiere el Capitán.

7. La tripulación no podrá desembarcar en puerto extranjero sin permiso del Capitán.

8. Cualquier miembro de la tripulación que no se presente abordo a la hora ordenada el día de la salida, o se presente en estado de embriaguez, será despedido y su puesto ocupado por un substituto.

9. Queda expresamente convenido que los derechos y las obligaciones por daño, lesión, enfermedad o muerte que sobrevenga a cualquiera de las personas que firman este contrato, mientras la contrata esté en vigor y permanezcan abordo o al servicio de la nave, serán exclusivamente gobernados por las leyes de la República de Honduras aplicables al caso.

10. Queda convenido que en el caso de que el buque no emprenda el viaje convenido, debido a un acontecimiento imprevisto o por cualquier otro motivo, la tripulación podrá ser despedida, pagándosele los salarios devengados hasta la fecha, mas seis días de salario como compensación, o podrá ser transferida en condiciones iguales a las de este contrato a cualquier otro buque de la misma compañía.

11. El algún miembro de la tripulación se dedicare al contrabando o a otra operación ilícita que ocasionare pérdidas, perjuicios o gastos al armador o a la nave, además de incurrir las sanciones legales correspondientes, pagará al armador o a la nave el importe de tales pérdidas daños o gastos.

12. Cualquiera disputa que se suscite entre el "Capitán, o el Armador y miembros de la tripulación relativa a las especificaciones de esta contrata será dirimida y resuelta por las autoridades competentes de la República de Honduras.

13. Cualquier miembro de la tripulación que sin licencia se ausentare del barco, estará sujeto a una multa equivalente a dos días de salario por cada día o fracción de día que esté ausente, y a las demás medidas disciplinarias de ley.

14. La Tripulación renuncia a que el Capitán lea los artículos de la LEY ORGANICA DE LA MARINA MERCANTE NACIONAL DE LA REPUBLICA DE HONDURAS.

15. Queda también convenido que están incluidos en esta contrata los preceptos del Artículo 53 de la LEY ORGANICA DE LA MARINA MERCANTE NACIONAL de la República de Honduras que dice: "Los derechos y compensaciones concedidos en esta ley a la gente de mar que compone la dotación de las naves mercantes nacionales, sustituyen y excluyen cualesquiera otros derechos, privilegios, compensaciones, indemnizaciones o acciones que puedan demandarse del patrono o de la misma nave, por causa de la enfermedad lesión o muerte del tripulante, y ni el patrono ni la nave responderán, ni será obligado a pagar bajo otras leyes de la República, o del país de nacionalidad de la víctima, o de cualquier otro país, otros daños, compensaciones o indemnizaciones por dichas causas que las establecidas expresamente en esta ley. El patrono hará constar el texto de este artículo en el "Rol de la Tripulación" como parte integrante y condición del contrato de enganche de la tripulación."

16. La tripulación igualmente se compromete a conducirse de manera ordenada, fiel, honesta, sobria y diligente en el cumplimiento de sus deberes; obediente a las órdenes, reglamentos e instrucciones del Capitán o de quien legalmente lo reemplace, y de los oficiales superiores, en todo lo concerniente al barco, su provisiones y carga ya sea abordo, en los botes o en tierra; y en consideración de esos servicios, dicho Capitán por la presente convienen en pagar a dicha tripulación, como salario las cantidades que aparecen al lado opuesto de sus respectivos nombres. Queda también convenido por la presente que cualquiera omisión o destrucción intencionada o negligente de la carga o provisiones del buque, deberá ser recompensada al dueño

1. Allotments will be made only to the following persons: wife, children, parents, brothers, sisters, grandparents, grandchildren, nephews or nieces, when duly approved by the respective Authority of the Republic of Honduras and inserted in the Allotment Book before the commencement of the voyage.

2. No advances are to be made to seamen before the time they have been actually earned.

3. No dangerous weapons or alcoholic beverages will be allowed in possession of the crew.

4. The crew may be transferred to any other vessel operated by the same company under the same conditions of this contract.

5. The crew will work on the day of arrival in port of final discharge until 5 o'clock P. M.

6. Crew will work cargo and ballast if required by the Master.

7. The crew will not go ashore in any foreign port except by permission of the Master.

8. Any member of the crew failing to report for duty at the designated hour on sailing day, or who reports intoxicated, will be discharged and his place occupied by a substitute.

9. It is expressly agreed that the rights and obligations arising from injury, illness, illness or death which occurs to any of the persons signing this contract, whilst the contract is in force, and they remain on board or in the service of the vessel, will be exclusively governed by the laws of the Republic of Honduras.

10. It is agreed that in the event the vessel does not proceed on the agreed voyage, due to an unforeseen event, or for any other motive, the crew may be discharged upon payment of earned wages, plus seven days wages as compensation, or may be transferred in conditions equal to those of this contract to any other ship of the same company.

11. If any member of the crew engages in smuggling or in any other illicit operation, causing losses, damages or expenses to the owner or to the ship, he also incurring the corresponding legal sanctions, he will pay to the owner or to the ship the sum of such losses, damages or expenses.

12. Any dispute arising between the Captain, or the owner and members of the crew relative to the specifications of this contract will be submitted to and determined by the competent authorities of the Republic of Honduras.

13. Any member of the crew found to be absent from the ship without leave, will be subject to a fine of two days pay for each day or part of a day he is absent, and to other legal disciplinary measures.

14. The crew waives the reading to them, by the Master, of the articles of the Organic Law of the National Merchant Marine of the Republic of Honduras.

15. It is also agreed that there are included in this contract the precepts of Article 53 of the ORGANIC LAW OF THE NATIONAL MERCHANT MARINE of the Republic of Honduras which says: "The rights and compensations granted in this law to seamen who make up the crews of national merchant ships substitute and exclude any other rights, persons compensations, indemnities or actions that could be required from the employer or from the ship by reason of the illness, injury or death of the crew, and neither the employer nor the ship will respond nor may be obligated to pay under other laws of the Republic or of the country of the victim, or of any other country, other damages, compensations or indemnities for said causes than those expressly established in this law. The employer will make appear on the crew list the text of this Article as an integral part and condition of the contract of enrollment of the crew."

16. The crew likewise agrees to conduct themselves in an orderly, faithful, honest and sober manner, in the fulfillment of their duties; obedient to the orders, regulations and instructions of the Captain or whoever legally replaces him, and of the superior officers in all that which concerns the ship, its stores and cargo, whether on board, in boats or on shore; and in consideration of such services, said Captain by these presents, agrees to pay to said crew, as wages, the amounts appearing opposite their respective names. It is likewise agreed by these presents that any embezzlement or willful or negligent destruction of the ship's cargo or stores shall be made good to the owner out of the wages of t

FIRMA OFFICIAL (Official's Signature)	FECHA DEL DESEMBARCHE (Date of Signing Off)	LUGAR DE DESEMBARCHE (Final Discharge)		BALANCE		FIRMA OFFICIAL (Official's Signature)	
		LUGAR (Place)	FECHA (Date)		FINAL RELEASE		
		Norfolk VA	1 H '58				Lafferty Hospital

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FILED
MAR 15 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 733

SOUTHERN CROSS STEAMSHIP CO., INC.,
Petitioner

versus

GEORGE FIRIPIS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF FIRIPIS IN OPPOSITION

SIDNEY H. KELSEY
1408 Maritime Tower
Norfolk 10, Virginia
Proctor for Respondent

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OPINIONS BELOW

The Opinions of the District Court and the Circuit Court of Appeals are unreported at this printing but are printed in the Petitioner's Appendix, the District Court's Opinion at pp. 1a-21a, with the Circuit Court's Opinion at pp. 2-18.

Título XII – Artículo 57 Todo tripulante de nave mercante nacional mayor de cien toneladas tendrá obligación de obtener y portar consigo su LIBRETA DE IDENTIFICACION que le habilitará para trabajar en las naves a bordo de las cuales sirva.

Título XIII – Artículo 65 Las naves mercantes nacionales de tráfico internacional tendrán la obligación de tener a bordo los siguientes documentos además de los ROL DE LA TRIPULACION

Article 57 Every member of the crew of a national merchant vessel of over 100 tons will have the obligation of obtaining and carrying with him his IDENTIFICATION BOOK which will habilitate him to work on the aforesaid national vessels

Article 65 National merchant vessels engaged in foreign traffic will be required to have on board the following documents 1 2 3 Articles of Agreement

CONTRATA DE ENGANCHE

(Articles of Agreement)

ENTRE EL CAPITAN Y TRIPULACION AL SERVICIO DE LA MARINA MERCANTE DE LA REPUBLICA DE HONDURAS

(Between Master and Seamen in the service of the Merchant Marine of the Republic of Honduras)

Oficina del CONSULADO de la Republica de Honduras en el Puerto de NEW YORK

Office of the of the Republic of Honduras at the Port of

a los días del mes de 19

this days of the month of 19

QUEDA CONVENIDO ENTRE EL CAPITAN Y LA TRIPULACION DEL

It is agreed between the Master and the Seamen of the

DEL CUAL ES CAPITAN Y QUE SALE RUMBO HACIA

of which is Master now bound for

O CUALQUIER OTRO PUERTO O LUGAR DEL MUNDO QUE EL CAPITAN ORDENARE, Y DE REGRESO A

or any part of the world as the master may direct, and back to

PUERTO FINAL DE DESCARGA Y POR UN TERMINO QUE NO EXCEDA DE MESES, QUE

final Port of discharge, for a term not exceeding months, that:

1° Adjudicaciones serán hechas anualmente a favor de los [illegible] que hayan servido a bordo [illegible] durante el año inmediato anterior. Cualquier reclamo será admitido [illegible] dentro del término de [illegible] meses después de [illegible] respectivo, y deberá ser acompañado de [illegible] que lo justifiquen.

2. No se harán descuentos a la Tripulación, salvo los [illegible] autorizados por la ley.

3. No se permitirán armas peligrosas o bebidas alcohólicas en poder de la Tripulación.

4. La Tripulación podrá ser transferida a cualquiera otra nave [illegible] por la misma compañía, bajo los mismos convenios de esta contrata.

5. La Tripulación trabajará al día de su llegada a puerto [illegible] un día de descanso.

6. La Tripulación trabajará en la carga y descarga a que [illegible] el Capitán.

7. La tripulación no podrá desembarcar en puertos [illegible] sin permiso del capitán.

8. Cualquier miembro de la tripulación que [illegible] a la hora señalada y día de salida [illegible] servicio de embarque será [illegible] por cada hora o día de demora [illegible].

9. Queda convenido además que en caso de [illegible] por [illegible] enfermedad o muerte que sobrevenga a cualquiera de los [illegible] permanezca en [illegible] inmediatamente [illegible] por los padres de [illegible] Leyes de Honduras aplicables al caso.

10. Queda convenido además que en caso de [illegible] impuestos [illegible] puedan hasta [illegible] que [illegible] igualen a los que [illegible] Honduras [illegible].

11. El [illegible] de la tripulación, [illegible] pérdidas, [illegible] daños, pagará o garantizará [illegible] hasta [illegible] de [illegible].

12. Cualquier disputa que se suscite [illegible] las especificaciones de esta contrata [illegible] de acuerdo con las Leyes de Honduras.

13. Cualquier miembro de la tripulación [illegible] equivalente a los días de salario [illegible] disciplinarias de ley.

14. La Tripulación renuncia a [illegible] ORGANICA DE LA MARINA MERCANTE NACIONAL DE LA REPUBLICA DE HONDURAS

15. Queda convenido además que [illegible] ORGANICA DE LA MARINA MERCANTE NACIONAL de la República de Honduras que [illegible] derechos y compensaciones [illegible] marinero tripulante, [illegible] y [illegible] marineros o acciones que puedan tener [illegible] bajo la [illegible] o muerte del tripulante [illegible] leyes de la República o del país de matrícula [illegible] compañía o indemnizaciones por dichas causas [illegible] parte integrante y fundamental del contrato de enganche de la tripulación.

16. La tripulación igualmente se [illegible] obligante en el cumplimiento [illegible] o de aquel legalmente [illegible] valores y cargo en que [illegible] por la presente contrata en [illegible] oponerse a sus [illegible] transmisión interconectada o [illegible] de cualquiera retaña o [illegible] en [illegible] de la presente [illegible] desempeñada [illegible] remunerado, [illegible] un [illegible] incompetente, [illegible] podrá ser reducido en proporción a su incompetencia [illegible] a [illegible] numérico de la tripulación se considerará agravado por algún [illegible] hará [illegible] notificada la representación consiguiente al Capitán o oficial encargado quien dará [illegible] para remediar el inconveniente.

Article 25 The time of the enrollment, work conditions and the rights and obligations which both contracting parties freely agree to, and which appear in the Articles of Agreement will be absolutely obligatory

Article 57 Every member of the crew of a national merchant vessel of over 100 tons will have the obligation of obtaining and carrying with him his IDENTIFICATION BOOK which will habilitate him to work on the aforesaid national vessels

Article 65 National merchant vessels engaged in foreign traffic will be required to have on board the following documents 1 2 3 Articles of Agreement

1st Adjudications will be made annually to the following persons who [illegible] during the [illegible] immediately [illegible] Any claim [illegible] within the [illegible] months of the voyage [illegible] and shall be accompanied by [illegible] respective Authority of the Republic [illegible]

2. No deductions will be made to seamen before the time [illegible] they have actually earned

3. No dangerous weapons or alcoholic beverages will be allowed in possession of the crew

4. The crew may be transferred to any other vessel operated by the same company under the same conditions of this contract

5. The crew will work on the day of arrival in port of final discharge until 5 o'clock P. M.

6. The crew will work cargo and ballast if required by the Master

7. The crew will not go ashore in any foreign port except by permission of the Master

8. Any member of the crew failing to report for duty at the designated hour or sailing day or who reports [illegible] after discharge, and his place occupied by a substitute [illegible]

9. It is [illegible] agreed, that the rights and obligations arising from [illegible] injury, illness or death other [illegible] of the persons signing this contract which at the contract is in force, and they remain on board [illegible] of the vessel will be exclusively governed by the laws of the Republic of Honduras

10. [illegible] In the event the vessel has not proceed on the agreed voyage due to the unforeseen [illegible] the crew may be discharged upon payment of earned wages plus [illegible] [illegible] or may be transferred, in conditions equal to those [illegible] this contract to any other ship of the same company

11. If any member of the crew engages in smuggling or in any other illicit operations causing losses, [illegible] to the owner or to the ship he will pay the corresponding legal sanctions he will pay to the owner or to the ship the sum of such losses, damages or expenses.

12. Any dispute arising between the captain, or the owner and members of the crew relative to the [illegible] of this contract will be submitted to and determined by the competent authorities of the Republic of Honduras

13. Any member of the crew found to be absent from the ship without leave, will be subject to a fine of [illegible] pay for each day or part of a day he is absent, and to other legal disciplinary measures.

14. The crew waives the reading [illegible] to the Master, of the articles of the Organic Law of the National Merchant Marine of the Republic of Honduras

15. It is also agreed that there are included in this contract the precepts of Article 53 of the ORGANIC LAW OF THE NATIONAL MERCHANT MARINE of the Republic of Honduras which says: "The rights and compensations granted by this law to seamen who make up the crews of national merchant ships substitute and [illegible] any other rights, previous compensations, [illegible] or actions that could be required from the [illegible] from the ship by reason of the illness, injuries or death of the crew and neither the employer [illegible] may be obliged to pay under other laws of this Republic or of the country [illegible] of any other country, damages, compensations or indemnities for said causes than [illegible] established in this law. The employer will make appear on the crew list the text of the Article [illegible] as an integral part and condition of the contract of enrollment of the crew."

16. The crew [illegible] agrees to conduct themselves [illegible] an orderly faithful manner and other manner, in the [illegible] of their duties, conformity to the orders, regulations and instructions of the Captain or whoever [illegible] replaces him and of the superior officers in all that which concerns the ship, its stores and cargo, [illegible] aboard, in boats or on shore, and in consideration of such services and Captain by these presents, [illegible] and crew, as wages the amounts appearing opposite their respective names. It is likewise [illegible] to these presents that any embezzlement or wilful or negligent destruction of the ship's cargo or stores [illegible] may be made good to the owner out of the wages of the person [illegible] in such manner [illegible] as qualified for a duty for what he is found to be incompetent, his wages may be reduced in proportion to his incompetency. It is likewise agreed that if any member of the crew considers himself to be aggrieved for any reason, he shall make the corresponding representations to an orderly manner to the Captain or Officer in charge, who will take the necessary steps to remedy the difficulty.

En testimonio de lo cual, DICHAS PARTES HAN SUBSCRITO SUS NOMBRES AL REVERSO DE LA PRESENTE, EL DIA INDICADO AL LADO OPUESTO DE SUS FIRMAS.

The said parties have subscribed their names on the other sides hereof on the days mentioned against their respective signatures.

	FIRMA Signature	CAPITAN Master
LA CONTRATA EMPIEZA EN Articles opened at	EL	19
LA CONTRATA TERMINA EN Articles terminated at	EL	19

	Greek Kardamyla - Greece							Same address					
PSILTIKLIS. APOSTOLOS	Greek Kardamyla - Greece	47	M	5'-6"	Br.	Fair	Br.	10 Rhiacadou Marmy Piraeus - Greece	Efigenia Tsiltikli Same address				
DIATSIGOS. APOSTOLOS	Greek Lesvos Island - Greece	31	S	5'-8"	Br.	Fair	Br.	38 Pavlou Mela Piraeus - Greece	Evangelos Diatsigos Same address				
HORAITIS. PANAGIOTIS	Greek	33	M	5'-7"	Br.	Fair	Br.	60 Vitaliou Piraeus - Greece	Anastasia Horaitou Same address				
POGONATSIS. NICOLAOS	Greek Kamiros - Greece	30	S	5'-5"	Br.	Fair	Br.	3 Minoos str Piraeus - Greece	Evgenia Pogonatsi Same address				
NATHIOUDIS. DEMETRIOS	Greek Chios - Greece	54	M	5'-5"	Br.	Fair	Gr.	40 Marcou Botsari Piraeus - Greece	Angeliki Nathioudi Same address				
ROUSKETOS. APOSTOLOS	Greek Nelos - Greece	33	M	5'-10"	Br.	Fair	Br.	Thiorygalos Nelos - Greece	Sophia Kousketou Same address				
SARRIS. CONSTANTINOS	Greek Chios - Greece	20	S	5'-8"	Br.	Fair	Br.	Kardamyla Chios - Greece	Despina Karampini Same address				
MITSOUKAS. CONSTANTINOS	Greek Lesvos - Greece	25	S	5'-5"	Br.	Fair	Br.	Vlisha - Lesvos Greece	Vassilios M. Mavras Same address				
EMPRAIOS. CHRISTOS	Greek	37	S	5'-7"	Br.	Fair	Br.	Chrysostomou 27 Athens - Greece	Kyriakoula Iolola Same address				
GOMBOS. POTIOS	Greek Syrni - Greece	38	M	5'-6"	Br.	Fair	Br.	Syrni - Greece	Anna F. Gomtou Same address				
FILIPPIS. GEORGIOS	Greek Chios - Greece	20	S	5'-5"	Br.	Fair	Br.	Kardamyla Chios - Greece	Nicolaos Filippis Same address				
MAKROPOULOS. ALEXANDROS	Greek Athens - Greece	22	S	5'-6"	Br.	Fair	Br.	26 Charilaou Trikoupi Athens - Greece	Kyriakos Makropoulos Same address				
KONSTANDINIDES. NICOLAOS	Greek Rodos - Greece	40	S	5'-6"	Br.	Fair	Br.	48 Kalifona Athens - Greece	Evangelos Heliadis Same address				
KOUKOULOSIANAKIS. COSTAS	Greek	48	M	5'-9"	Br.	Fair	Br.	29 Stefanidou Piraeus - Greece	Maroula Koukoulogianni Same address				
KANDALIS. STRATIOS	Greek Chios - Greece	27	M	5'-9"	Br.	Fair	Blk	Vrondados Chios - Greece	Maria Skandali Same address				
FIGOS. DEMETRIOS	Greek Kalyvia Attikis	20	S	5'-6"	Blk	Fair	Blk	Kalyvia - Attikis Greece	Nicolaos Figos Same address				
OURLAKIS. EMMANUEL	Greek Nelos - Greece	34	M	5'-5"	Br.	Fair	Br.	Thiorahalo Nelos - Greece	Helen Tourlaki Same address				
PAPELAS. DEMETRIOS	Greek Chios - Greece	21	S	5'-8"	Br.	Fair	Br.	Kardamyla Chios - Greece	Agapia Papela Same address				
KALOGERAS. MICHAEL	Greek Chios - Greece	48	M	5'-6"	Br.	Fair	Br.	Amades Chios - Greece	Sophia M. Kalogera Same address				
STRATOS. GEORGIOS	Greek Chios - Greece	18	S	5'-8"	Br.	Fair	Br.	Kardamyla Chios - Greece	Ferronia Nikolaou Same address				
ILIDAS. IOANNIS	Greek Chios - Greece	28	S	5'-6"	Br.	Fair	Br.	Kardamyla Chios - Greece	Costas Ilidas Same address				
KOULIAKOS. COSTAS	Greek Chios - Greece	37	M	5'-8"	Br.	Fair	Br.	Efimiou M. Lepsat. Athens - Greece	Sophia Koulioukou Same address				
KOUTELAS. ANGELIS	Greek Chios - Greece	30	S	5'-8"	Blk	Fair	Blk	Kardamyla - Chios Greece	Irene G. Koutela Same address				
PAPAPLAKAS. EUSTRATIOS	Greek Chios - Greece	22	S	5'-8"	Blk	Fair	Br.	Thalpotaki - Chios Greece	Eudoxos Tsamplakos Same address				
KOUTSOUFOULOS. HELIAS	Greek	20	S	5'-6"	Blk	Fair	Br.	123 Pireaos Piraeus Athens - Greece	Evgilia Stavropoulou Same address				
KOUTSOUFOULOS STEFANOS	Piraeus Greek GREEK	24	Piraeus	5'-7"	Blk	Blk	Blk	Eden avenue 3204 Baltimore Md. 21	Lula Fantapoulou Same address	4	1/4/58 Dismissed	$55.00	

Nr. 1 W 1 H 58

Letter Hospital

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 28th, 1960. The Petition for a Writ of Certiorari was filed on February 16th, 1961. The jurisdiction of this Court is invoked under Title 28, U. S. C. Sec. 1254 (1).

QUESTIONS PRESENTED

I. DOES THE JONES ACT, TITLE 46 U. S. C. 688 et. seq. APPLY WHERE THERE IS AN OVERBEARING AGGREGATE OF UNITED STATES SUBSTANTIAL CONTACTS OF EFFECTIVE OPERATION, MANAGEMENT, CONTROL AND OWNERSHIP OF A FOREIGN FLAG VESSEL AND WHERE FURTHER THERE IS NO CONNECTING LINK OR CONTACT WITH THE FOREIGN COUNTRY OF THE SHIP'S FLAG?

II. SHOULD WAGE PENALTIES UNDER 46 U.S.C. 596 HAVE BEEN ASSESSED WHERE FROM THE DATE OF LIBEL EARNED WAGES WERE DUE AND CLAIMED, THE CLAIMS REPEATEDLY ASSERTED AND JUST AS STUBBORNLY REFUSED BY THE SHIPOWNER UNTIL AFTER FINAL JUDGMENT IN THE DISTRICT COURT?

STATUTES INVOLVED

The Statutes involved are 46 U. S. C., 688 et. seq. (App. 2), known as the Jones Act and Title 46, U.S.C. 596 (Pet. App. 26), known as seaman's double wage penalty statute.

COUNTER STATEMENT OF THE CASE

This counter statement of the case is deemed necessary in correcting certain inaccuracies or omissions in the Statement of the shipowner-Petitioner. Seaman Firipis joined the SS MARGARITIS on April 6, 1957, having signed an employment contract in Piraeus, Greece for voyages to last for one year. Within approximately three weeks of the expiration of his employment contract, the vessel changed Masters at Hamburg and while en route to the United States at sea on March 13th, 1958, Firipis signed new articles with the new Master for an additional term of service. The vessel flew the Honduran flag and the new articles signed at sea with the new Master provided for application of Honduran law to govern rights and liabilities in case of injury. Petitioner Southern Cross Steamship Company, the ship's ostensible corporate owner, was a Liberian Corporation although neither the owners resided in Liberia nor were they Liberian citizens nor was the effective control, management or operation of the vessel had from Liberia. (App. 3-5). Nor did the owners reside nor had this Honduran flag vessel ever been to Honduras and no contact or connection whatsoever was had by the vessel or her owners with Honduras or Liberia. (App. 3-5). All of the effective control, management and operation of both the shipowner petitioner, the owning corporation which resided at 1 Broadway, New York City and the vessel SS MARGARITIS was in New York City and all of the voyages of the vessel prior to the injuries to Firipis with the exception of two were to and from ports of the United States and other ports of the world with the exception of Honduran, Liberian, and Greek ports, there being none to the latter three countries. (App. 3-5). A United States citizen owned twenty (20%)

per cent of the stock of Petitioner and eighty (80%) per cent was owned by Greek citizens, the latter either residing in New York City or making the United States the place of the operational control and management of the SS MARGARITIS. Although Firipis signed his contract of employment in Greece, the articles signed on the ship provided for application of Honduran law. No voyages were ever made to Greece and the only contact was Greek ownership of eighty (80%) per cent of Petitioner's stock. The vessel MARGARITIS unquestionably flew a phony flag. The Findings of Fact of the District Court were: "That the SS MARGARITIS is a 'flag of convenience' cannot be doubted." The Petitioner shipowner neither in the District Court or the Circuit Court of Appeals urged application of the Greek law nor did seaman Firipis. Petitioner urged Honduran law and Firipis urged the Jones Act, 46 U.S.C., Sec. 688 because of the overbearing American contacts and connection coupled with partial American ownership.

Petitioner shipowner states at page 2 that articles were signed at Bremen, Germany on March 13, 1958. They were signed at sea and not in Germany. (D. C. Opinion Pet. App. p. 19a).

Having been unsuccessful in securing the application of Honduran law, for the first time in this Court, Petitioner by inference suggests the application of Greek Law of which it never introduced evidence in either of the Courts below. It is clear that this Court would not for the first time consider such suggestion, Petitioner having failed to prove the Greek law nor relying on such law in either of the lower Courts.

While at sea on March 13, 1958 en route to the United States when new articles were signed, Petitioner ship-

owner owed Firipis over 28 English pounds in earned wages, rendering him a wage statement to that effect. Firipis demanded but never received these earned wages. On reaching Norfolk, Virginia he was injured on April 1, 1958 but was paid only his wages of $53.54 from March 13th to April 2nd, 1958. On April 14th, 1958 Firipis filed his Libel for damages for personal injuries with separate claim for earned wages and penalties due him under 46 U.S.C. 596. The shipowner therefore knew on April 14th, 1958 that Firipis was claiming his earned wages due him and unpaid up to March 13th, 1958 amounting to over 28 English pounds. Petitioner states on page 3 that this was the first time it learned that there were wages due from a "prior voyage." This is incorrect as petitioner's contract of employment for different voyages for one year was not terminated until April 6th, 1958, some five days after he was injured at Norfolk. The number of voyages during this period is unimportant as he had been hired for continuous voyages for an entire year.

Although Firipis continuously demanded his earned wages from April 14th, 1958 through until the final judgment in the District Court on February 22nd, 1960, the shipowner stubbornly refused to pay Firipis and thereafter deposited the earned wages plus penalties in the registry of the District Court in order to avoid running of future penalties during appeal. Firipis has not received his earned wages even as of today.

Petitioner states on page 8 that on August 21st, 1958 at time of taking of Firipis' deposition de bene esse, its "attorneys first learned that libellant claimed he was due wages." This is incorrect as petitioner's attorneys had copy of Firipis' libel on April 14th, 1958 at the time it was filed. The assessment of penalties for failure to pay earned

wages under 46 U.S.C. 596 is within the discretion of the District Court. The Circuit Court of Appeals has upheld the District Court's finding and has decided there was no abuse of discretion.

ARGUMENT

POINT I. THE OVERBEARING AGGREGATE OF THE CONNECTIONS AND CONTACTS WITH THE UNITED STATES COMPELS THE APPLICATION OF THE JONES ACT.

Petitioner states as a reason for granting the Writ that this case is in conflict with the decision of this Court in Lauritzen v. Larsen, 345 U. S. 571 and Romero v. International Term Co., 358 U. S. 354, but we feel that there is no merit in this suggestion as in the Lauritzen decision the vessel flew a bona fide Danish flag and was owned and wholly controlled by Danish citizens, all of whom were sued by a Danish seaman. In Romero the vessel flew a bona fide Spanish flag and was wholly owned and controlled by Spanish citizens, all of whom were sued by a Spanish seaman. Lauritzen and Romero were not flag of convenience cases. In Lauritzen the only United States contact was the signing of articles. In Romero the only United States contact was the occurrence of injuries in American waters. Indeed Lauritzen did not involve a conflict between the laws of the flag and the laws of a country in which there was an overbearing aggregate of substantial connection and contacts of effective operation, management, control and partial ownership, since in Lauritzen the flag and all effective control was Danish. Similarly Romero does not involve a case of conflict between the law of the flag and the law of a country in which there was an overbearing aggregate of substantial connection

and contacts of effective operation, management, control and partial ownership, since in Romero the flag and all effective control was Spanish. This Court in Lauritzen excluded the phony flag ships from the application of the ensign stating at 354 U. S. 571, 587:

> "But it is common knowledge that in recent years the practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our Courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them."

The Lauritzen decision only sets forth the pilot rules for the application of conflicting considerations leading to application of law for bona fide flag vessels and the holding was restricted merely to deciding that the Jones Act, 46 U. S. C. 688, as a matter of statutory construction did not cover a plaintiff in Larsen's situation. Gilmore and Black, The Law of Admiralty, 387-88. Lauritzen, in deciding that the flag is the important element to consider clearly does not apply to a flag of convenience case. An ensign which ceases to be bona fide also loses its respect and importance.

Therefore in following the principles of the Lauritzen decision, the lower Courts must look to other considerations to determine the choice of law and these considerations are most frequently the overbearing aggregate of substantial connection and contacts of effective operation, management, control and ownership of a vessel. Bartholomew v. Universe Tankships, Inc., 263 F 2d 437 (2nd Cir. 1959) cert. den. 359 U. S. 1000; Gerradin v. United Fruit Co., 60 F 2d 927, (2nd Cir. 1932) cert. den. 287 U. S.

642; Carroll v. United States, 133 F 2d 690 (2nd Cir. 1943).

The entire thrust of the petitioner's argument here as reason for granting the Writ is that 80% of the corporation shipowner was owned by Greek citizens and the Jones Act should not have been applied. But ownership is only one factor out of many which should be considered under the Lauritzen decision. Petitioner's argument implies that Greek law should have been applied. But the petitioner never urged such a law below and cannot urge it before this Court. Lauritzen v. Larsen, 354 U. S. 571, 584.

We believe that the Second Circuit in Bartholomew v. Universe Tankships, Inc., 263 F 2d 427 (2nd Cir. 1959) cert. den. 359 U. S. 1000, expressly following the mandate of Lauritzen and being governed by the standards set forth therein, has correctly evaluated the standards of choice of law in these cases stating at page 440 of 263 F 2d:

> "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. Thus we conclude that the test is that 'substantial' contacts are necessary. And while as indicated supra one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more to say that in such a case the contact is so obviously substantial as to render unnecessary a further probing into the facts.
>
> * * * * * *
>
> "Accordingly, the decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are

substantial. Thus each factor is to be 'weighted' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act. We shall now proceed to apply these principles to the case before us.'

Both the District Court and Circuit Court of Appeals in this case followed and relied upon Bartholomew in deciding this case. In view of this Court denying certiorari in Bartholomew we are confident that no conflict either in principle or decision exists between this case and the Lauritzen decision of this Court as construed and followed in the Second Circuit decision in Bartholomew.

Here the aggregate of the substantial connection and contacts of the petitioner and the SS MARGARITIS with the United States are:

(1) Petitioner has its residence and office at No. 1 Broadway, New York City, New York.

(2) Petitioner actively directs, operates, manages and controls the SS MARGARITIS from its office in New York City;

(3) Petitioner has no connection or contact whatsoever with Honduras nor has its vessel ever been there nor were any Honduran seamen aboard;

(4) Petitioner although alleging to be a Liberian corporation has no officers or employees in Liberia nor has the SS MARGARITIS ever been to Liberia nor were any Liberian seamen aboard;

(5) Petitioner neither had offices nor officers nor was the SS MARGARITIS controlled or operated from Greece nor did it fly the Greek flag;

(6) Seaman Firipis validated articles in New York City and was injured at Norfolk, Virginia;

(7) Petitioner violated the United States Wage Statutes (46 U. S. C. 596) at Norfolk, Virginia;

(8) All but two of the voyages of the SS MARGARITIS were made between the United States and other ports of the world excepting Honduras, Liberia and Greece;

(9) Twenty (20%) per cent of petitioner's stock was owned by a United States citizen.

Indeed as in Lauritzen, 345 U. S. 571 (1953) and Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437, cert. den. 359 U. S. 1000, the decision in this case depended upon the particular facts and the presence of these factors shows the correctness of the decision below. Petitioner's contentions here are plainly insubstantial and this Court has previously declined to consider similar contentions made in Bartholomew by denying a Writ in that case.

POINT II. UNDISPUTED WAGES WERE DUE FIRIPIS FOR WHICH DEMANDS WERE MADE AND THE COURTS BELOW IN THEIR DISCRETION WERE JUSTIFIED IN ASSESSING PENALTIES AGAINST PETITIONER.

Petitioner states as a reason for granting the Writ that the decision in this case conflicts with McCrea v. United States, 294 U. S. 23. Petitioner fails to point out to this Court that the seaman in McCrea forfeited and ev-

cused the Master's omission to pay his earned wages by not returning for payment after he had demanded his wages. This Court expressly held that there was "an excusable failure to pay within the prescribed period" on the part of the Master precluding assessment of penalties. But here Firipis demanded his wages on April 14th, 1958 after being injured on April 1st, 1958 and the stubborn shipowner refused to pay acknowledged earned wages until after final decree on February 22nd, 1960. On this issue there is no similarity whatsoever between this case and the decision of the Court in McCrea. But the shipowner here argues that McCrea holds there is no liability for wage penalties for any previous voyages. We suggest that petitioner's interpretation of the McCrea decision is not that far reaching. This contention was made in Korthinos v. Niarchos, 175 F 2d 730 (4th Cir. 1949) cert. den. 338 U. S. 894. The Court of Appeals below in that decision, 175 F. 2d 730, 733 states:

> "We see no reason why recovery of wages should be limited to the last voyage . . ." under 49 U: S. C. Sec. 596.

Petitioner also fails to point out to this Court that seaman Firipis here was employed under a one-year contract of employment for continuous voyages which was not terminated until April 6th, 1958, five days after his injuries and separation from the vessel. In Mavromatis v. United Greek Shipowners Corp., 179 F 2d 310 (1st Cir. 1949). Greek seamen were continuously employed on a Greek vessel for three voyages. The Master only wanted to pay wages for the third voyage upon the termination of contract of employment at end of the third voyage. The Court assessed penalties for failing to pay wages for the two previous voyages

We feel that in view of the wide discretion given lower Courts in assessing seamen's wage penalties, in the absence of clear abuse of discretion, this Court would not deem a review warranted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

SIDNEY H. KELSEY,
Proctor for Respondent Seaman Firipis

SIDNEY H. KELSEY
1408 Maritime Tower
Norfolk 10, Virginia
Attorney for Respondent

JONES ACT, 46 U. S. C. 688

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seamen as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

CERTAIN INTERROGATORIES OF FIRIPIS AND ANSWERS OF PETITIONER SOUTHERN CROSS STEAMSHIP COMPANY, INC:

3. State the names, addresses and citizenship of all stockholders or persons owning an interest in Southern Cross Steamship Company, Incorporated, owner of the SS MARGARITIS and if any of these stockholders or persons are corporate, state the addresses of the offices of said corporations if any, and their nationality and state further the names, addresses and nationality of each and every stockholder in such corporations if any, further stating the names, addresses and nationality of each and every stockholder in any subsequent corporation owning stock in respondent Southern Cross Steamship Company, Incorporated, until such true ownership of respondent Southern Cross Steamship Company, Incorporation is finally traced to any individual stockholder or stockholding individuals stating the names, addresses and nationality of each of such stockholder or stockholding individuals.

Ans: Southern Cross Steamship Company, Inc. is presently wholly owned by Greek citizens. At the time of the alleged injury to George Firipis 20% of the corporate stock was owned by Mr. Stephen Perry, 73 W. Beech Street, Long Beach, New York, However, in January, 1959 Mr. Perry sold his interest to Greek citizens.

7. State whether or not respondent Southern Cross Steamship Company, Incorporated at the time of the occurrences mentioned in the libel, maintained an office in the Republic of Honduras and if so give the address of said office, the names and addresses of all employees and the length of time prior to the incidents in the libel that such office or any office in the Republic of Honduras was maintained.

Ans: No.

8. State whether or not operating instructions of the SS MARGARITIS were issued from the Republic of Honduras.

Ans: No.

9. State whether or not the SS MARGARITIS prior to the occurrence in the libel, made any voyages to or from the Republic of Honduras to other ports of the world and if so the number of said voyages and dates of touching at Honduras and leaving Honduras prior to the incidents of the libel.

Ans: No.

10. State the names and addresses of those persons giving the operating instructions for said SS MARGARITIS.

Ans: At the time of the injury to Firipis orders were given by the Greek owners and Mr. Stephen Perry, an American citizen (who owned 20% of the corporate stock).

11. State the dates and places of contacts and voyages of the SS MARGARITIS to and with ports of the United States for a period of two years prior to the libellant's injuries.

Ans: V/12 dated Paris 12/13/55—Delivery Japan—Redel.

Cont.

V/13—C/P dated New York 4/17/56—New York—Rotterdam.

V/14—C/P dated New York 5/31/56—Norfolk France.

V/15—C/P dated New York 6/19/56—Baltimore Germany.

V/16—C/P dated New York 8/17/56—Newport News France.

V/17—C/P dated New York 9/27/56—New York Japan.

V/18—C/P dated New York 1/17/57—Portland Egypt.

V/19—C/P dated London 4/8/57—Yeman/Japan.

V/20—C/P dated New York 5/24/57—Vancouver Rotterdam.

V/21—C/P dated New York 7/25/57—New York Havana.

V/22—C/P dated New York 8/8/57—New Orleans Mexico.

V/23—C/P dated New York 10/24/57—Galveston Brazil.

V/24—C/P dated London 11/29/57—Argentina Germany.

IN THE

Supreme Court of the United States

October Term

No. 733

REPLY TO BRIEF OF
FIRIPIS IN OPPOSITION

IN THE

Supreme Court of the United States

October Term — 1960

No. 733

SOUTHERN CROSS STEAMSHIP CO., INC.
Petitioner

v.

GEORGE FIRIPIS
Respondent

REPLY TO BRIEF OF FIRIPIS IN OPPOSITION

The courts below and the libellant in the District Court rely upon certain alleged contacts with the United States which they feel are sufficient to apply the Jones Act to the facts of this case, rather than the law of the vessel's flag which the seaman had agreed to govern his service on the vessel and notwithstanding the admitted facts that the Honduran law was properly proven and the Hondural Consul at Norfolk came forward and offered to adjudicate the matter between the parties (see affidavit Hondural Consul, appendix) pursuant to Article XXII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Honduras.

On pages 9 and 10 of respondent, George Firipis' Brief in Opposition are listed nine (9) alleged significant contacts with the United States. These purported contacts are either not supported by the evidence or are

in actuality of no significance. In order that the record might be correct in this regard, we will discuss each of these purported contacts separately:

"1. PETITIONER HAS ITS RESIDENCE AND OFFICE AT NO. 1, BROADWAY, NEW YORK CITY, NEW YORK."

The petitioner in this case is Southern Cross Steamship Co. Inc. In the District Court libellant below propounded the following interrogatory and the respondent below gave the following answer:

"Interrogatory No. 2—State the address of the principal office of said Southern Cross Steamship Company, Incorporated, together with the addresses of any other office of said respondent."

"Answer: No. 80 Broad Street, Monrovia, Liberia."

However it is interesting to note that the *libellant in his appendix* to his brief in the Court of Appeals *deletes this interrogatory and answer though he purports to set forth fully all interrogatories propounded by libellant and answers given by respondent,* Southern Cross Steamship Co. Inc. (Compare Interrogatories and answers appendix libellant's brief before Circuit Court of Appeals with those in record)

"2. PETITIONER ACTIVELY DIRECTS, OPERATES, MANAGES AND CONTROLS THE SS "MARGARITIS" FROM ITS OFFICE IN NEW YORK CITY"

Here again there is no evidence in the record to support such a statement. Again we refer the Court to

libellant's interrogatories and respondent's answer which were introduced by libellant in the District Court.

"Interrogatory No. 5 — State whether or not Southern Cross Steamship Company, Incorporated, directly issued orders or instructions with reference to the management, operation, control and sailing instructions of the SS "MARGARITIS".

"Answer — Southern Cross Steamship Company, Inc. issues orders directly for the operation, etc. of the SS 'MARGARITIS'.

Here again it is most interesting to note that *libellant* on page 6 of the appendix of his brief in the Circuit Court of Appeals where he sets forth this interrogatory as No. 6 *fails to give the correct answer* above which appears in the record, *but instead, states that respondent's answer was, to this most determining question "NO".*

"3. PETITIONER HAS NO CONNECTION OR CONTACT WHATSOEVER WITH HONDURAS NOR HAS ITS VESSEL EVER BEEN THERE NOR WERE THERE ANY HONDURAN SEAMEN ABOARD."

This allegation is readily admitted. However, the vessel in question was registered in Honduras, flew the Honduran flag, the seaman libellant agreed to the application of Honduran law should he have any claim for injury or illness *and the Hondural Consul at Norfolk offered to determine the controversy between the parties.* (See this appendix)

"4. PETITIONER ALTHOUGH ALLEGING TO BE A LIBERIAN CORPORATION HAS NO OFFICERS OR EMPLOYEES IN LIBERIA NOR HAS THE SS "MARGARITIS" EVER BEEN TO LIBERIA. NOR WERE ANY LIBERIAN SEAMEN ABOARD".

The first part of this allegation is refuted by the vessel owner's answer to libellant's interrogatory No. 2 and interrogatory No. 6 which we have set forth correctly and discussed above.

"5. PETITIONER NEITHER HAD OFFICES NOR OFFICERS NOR WAS THE SS "MARGARITIS" CONTROLLED OR OPERATED FROM GREECE NOR DID IT FLY THE GREEK FLAG."

We need say no more relative to this allegation than that it is immaterial relative to determining if the Jones Act or Honduran law is applicable in this case.

"6. SEAMAN FIRIPIS VALIDATED ARTICLES IN NEW YORK CITY AND WAS INJURED AT NORFOLK, VIRGINIA."

Seaman Firipis *did not* validate any Articles at New York City. The Articles in question were signed by Firipis at Bremen, Germany, on March 13, 1958 and validated thereafter by the Honduran Consul at New York, no Honduran Consul being at Bremen. (See Articles attached petitioner's appendix).

"7. PETITIONER VIOLATED THE UNITED STATES WAGE STATUTES (46 U. S. C. A. 596) AT NORFOLK, VIRGINIA."

Assuming such a violation did occur it has no material bearing on the application of the Jones Act to an injury claim.

"8. ALL BUT TWO OF THE VOYAGES OF THE SS 'MARGARITIS' WERE MADE BETWEEN THE UNITED STATES AND OTHER PORTS OF THE WORLD EXCEPTING HONDURAS, LIBERIA AND GREECE."

This court decided long ago in *Lauritzen* v. *Larsen* 345 U. S. 571, that this was not a factor to be considered in determining the law applicable to seamen injured on foreign flag vessels.

"9. TWENTY (20) PERCENT OF PETITIONER'S STOCK WAS OWNED BY A UNITED STATES CITIZEN."

In opposition to this allegation we need only say that eighty (80) percent of petitioner's stock was owned by aliens.

Respectfully submitted,

HUGH S. MEREDITH
WALTER B. MARTIN, JR.
Proctors for Southern Cross Steamship Co., Inc.

APPENDIX

AFFIDAVIT OF ROLANDO J. de LEON
CONSUL FOR THE REPUBLIC OF HONDURAS

This day came Rolando J. de Leon, who first having been sworn doth depose and say that he is consul for the Republic of Honduras at Norfolk, Virginia; that pursuant to Article XXII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Honduras, he requests this Honorable Court to decline jurisdiction of the claim of Georgios Firipis against the Honduran Steamship MARGARITIS; that he stands ready, willing and able to adjust said claim pursuant to the laws of the Republic of Honduras.

ROLANDO J. DE LEON

Subscribed and sworn to before me this 31st day of July, 1958.

Joseph A. Gawrys
Notary Public

My commission expires: February 18, 1962